

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Company,
Appellants,

vs.

THE PACIFIC TELEPHONE and TELEGRAPH COMPANY, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California,
Southern Division.

FILED

JAN 25 1937

PAUL P. O'BRIEN,

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Company,
Appellants,

vs.

THE PACIFIC TELEPHONE and TELE-
GRAPH COMPANY, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Affidavit of A. C. Calender.....	17
Affidavit of P. R. Clements.....	18
Affidavit of P. R. Clements.....	20
Affidavit of Fred S. Leon.....	25
Answer of Fred S. Leon.....	30
Answer of Dagmar Leon.....	40
Assignment of Errors.....	105
Bill of Complaint.....	2
Bond on Appeal.....	110
Citation	123
Clerk's Certificate	121
Decree	50
Findings of Fact and Conclusions of Law.....	44
Memorandum of Decision.....	43
Minute Order Denying Motion to Dismiss, etc.	42
Minute Order Granting Preliminary Injunction	29
Names and Addresses of Attorneys.....	1
Order Allowing Appeal.....	105
Order to Show Cause.....	15
Petition for Appeal.....	103

	Index	Page
Praecipe (Appellant)		114
Praecipe (Appellee)		115
Statement of Evidence.....		52
Witnesses for Defendants:		
Church, William E.		
—direct		96
—cross		98
Leon, Dagmar, Mrs.		
—direct		99
—cross		99
Leon, Fred S.		
—direct		94
—cross		95
—redirect		96
Witnesses for Plaintiff:		
Calendar, Albert C.		
—direct		78
—cross		79
—redirect		82
Clements, Percy R.		
—direct		74
—recalled, rebuttal		100
—recalled, cross		101
Van Orden, Howard L.		
—direct		73
Woltman, Henry R.		
—direct		53
—cross		63
—redirect		70
—recross		71

	Index	Page
Stipulation and Order Enlarging Time to File		
Praecipe		112
Stipulation and Order Enlarging Time to File		
Praecipe		113
Stipulation and Order Transferring Exhibits.....		119

JAMES M. NAYLOR, Esq.,
ARTHUR B. SHAPRO, Esq.,
Russ Bldg., San Francisco, Calif.,
Attorneys for Appellants.

PILLSBURY, MADISON & SUTRO, Esqrs.,
Standard Oil Bldg., San Francisco, Calif.,
Attorneys for Appellee.

[Endorsed]: Filed Oct 26 1935.

Issued Subpoenas

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff,
Standard Oil Building,
San Francisco, California.

In the District Court of the United States for the
Northern District of California, Southern
Division.

In Equity—No. 3943S

THE PACIFIC TELEPHONE AND TELE-
GRAPH COMPANY, a corporation,
Plaintiff,

vs.

FRED S. LEON and DAGMAR LEON, doing busi-
ness as Numerical Directory Co.,
Defendants.

BILL OF COMPLAINT

To the Honorable Judges of the United States District Court for the Northern District of California, Southern Division:

Plaintiff complains of defendants and for causes of action alleges: [1*]

I.

Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California and has its principal place of business in the City and County of San Francisco, State of California, in the Northern District of California and in the Southern Division thereof.

II.

Defendants are citizens of the United States and inhabitants of the City of Oakland, County of Alameda, State of California, in said Northern District of California and in the Southern Division thereof.

III.

This suit arises under the Copyright Acts of the United States.

IV.

Plaintiff, since its incorporation in 1906, has been engaged in the business of furnishing telephone and telegraph service in and throughout the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin and San Mateo, State

*Page numbering appearing at the foot of page of original certified Transcript of Record.

of California, and generally throughout said Northern District of California. In furnishing such telephone and telegraph service it has been for many years, and now is, subject to the Constitution and laws of the State of California and under the provision of said Constitution and laws, it is a public utility. As a part of furnishing said telephone service as a public utility to the inhabitants of said city and county, and counties, it has published and caused to be printed, at frequent intervals, the San Francisco and Bay Counties Telephone Directory and the Oakland, Alameda, Berkeley, San Leandro and Bay Counties Telephone Directory, which directories contain the names, [2] addresses and telephone numbers of each listed subscriber to telephone service of the plaintiff in said localities on the date when the manuscript for said directories closes. Issues of these directories are published by plaintiff at various intervals. These issues are necessary by reason of the numerous changes of residence and business addresses and telephone numbers, as well as the addition of new subscribers, and the discontinuance of telephone service by other subscribers. The cost of publishing said telephone directories for the May, 1935, editions thereof, was the sum of \$295,222.

V.

The work of collecting and arranging the names, addresses and telephone numbers of its various subscribers, and of keeping the same corrected to date,

as published in its directories, involves a large amount of detail and requires great effort, discretion, care, skill, labor and accuracy. At varying intervals the material collected and arranged is published and constitutes and is the only authorized and correct telephone directory of the subscribers in the hereinabove mentioned counties and in the immediate vicinity, and plaintiff as author, owner, compiler and publisher thereof, and by reason of its financial interest in the classified section of said directories, which contains a large amount of advertising, which is bound and published with the alphabetical portions thereof, is possessed of a valuable business and goodwill in the entire directories.

VI.

Plaintiff, on April 29, 1935, published the May 1935 issue of the Oakland, Alameda, Berkeley, San Leandro and Bay Counties telephone directory and the May 1935 issue of the San [3] Francisco and Bay Counties telephone directory. Plaintiff, as author and proprietor of said directories, duly copyrighted them under the copyright laws of the United States by doing the following acts:

1. It caused the text of all copies to be printed from plates made within the limits of the United States from type set therein, and it caused the printing of the text and the binding of the said books to be performed within the United States.

2. After the printing, typesetting and manufacture of said directories, as herein alleged, plaintiff

published said directories within the limits of the United States, which was the first publication thereof in this or any other country with the notice of copyright required by the statutes of the United States then in force, by affixing to each and every copy of said books published or offered for sale in the United States upon the title page thereof, the word "Copyright" together with the year in which the copyright was secured by publication, accompanied by the name of plaintiff as the copyright proprietor, in the manner following: "Copyright 1935, by The Pacific Telephone and Telegraph Company."

3. After plaintiff had secured the copyright of said directories by publication of the said directories with the notice of copyright, as hereinabove alleged, plaintiff promptly deposited in the mail, addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies were produced in accordance with the manufacturing provisions hereinabove set forth.

VII.

The copies of said directories so mailed, addressed to [4] the Register of Copyrights, Washington, District of Columbia, were accompanied by affidavits under the official seal of an officer authorized to administer oaths within the United States, duly made by a duly authorized agent of plaintiff, residing in the United States, setting forth therein that plain-

tiff had duly done and performed all acts and complied with all requirements necessary to establish its rights to the aforesaid copyrights under the statutes of the United States in such cases made and provided, and had paid the fees required by the Copyright Act.

VIII.

After the mailing of said copies and affidavits, as aforesaid, the Register of Copyrights issued to plaintiff certificates of copyright of said issues of said directories pursuant to the copyright laws, photostatic copies of which certificates are attached hereto, marked Exhibits "A" and "B", and made a part hereof as fully as if herein set forth at length.

IX.

Commencing with the issue of October 1908 and continuously thereafter to and including said May 1935 issue of said directories, it has duly and legally copyrighted each of said directories.

X.

The collection, editing, compilation, classification, arrangement and preparation of the material included in said directories required discretion, judgment, painstaking care, skill and experience of a high order. The result of the labor of the persons employed and paid by plaintiff for those purposes before publication became and was the sole and exclusive property of plaintiff, who possessed the sole and exclusive literary and other rights therein, in-

cluding the right to [5] copyright. The said directories, and each of them, constitute and are, within the meaning of the Copyright Act, new and original literary works, and are the proper subject of copyright. Said copyrights are all unexpired and are still in full force and effect, and plaintiff is the sole and exclusive owner, author and proprietor thereof.

XI.

After the securing of the several copyrights in said directories and the registration of the same, and particularly after the distribution of the May 1935 issue of the said directories, and before the commencement of this suit, the defendants, with full knowledge of the aforesaid copyrights of plaintiff and during the existence thereof, and while the same were in full force and effect, and during the period of ownership thereof by plaintiff, have knowingly, wrongfully, wilfully, fraudulently and unlawfully caused to be prepared and printed, published and distributed, certain alleged telephone directories entitled "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935." Defendants have copied and transferred into their said directories, without the consent or license of plaintiff and in violation of plaintiff's rights under its copyrights, valuable and material portions of plaintiff's copyrighted books. Said piratical books of defendants are largely, and to an injurious extent, copies from plaintiff's aforesaid copyrighted books with substantially no change. The copying by defendants

from plaintiff's books is so exact as to include any errors or mistakes contained in plaintiff's copyrighted books, and thus defendants have saved themselves the expenditure of a large amount of time, labor and money. The portions of plaintiff's copyrighted books so taken and appropriated constitute and are the substantial [6] and material portions thereof and of said defendants' infringing books. The list of subscribers contained in defendants' said infringing books is entirely copied from plaintiff's said copyrighted books, and plaintiff is informed and believes, and therefore avers, that said lists were not obtained from original sources.

XII.

The purpose of defendants in producing their said infringing telephone directories, by copying and appropriating therefor the material contained in plaintiff's said copyrighted telephone books, instead of obtaining the same from original sources, was to sell advertising space in said infringing books, and not for the purpose of benefiting plaintiff's subscribers. Such infringing books, containing errors which have been corrected in later issues of plaintiff's directories, tend to and do impede and hamper the telephone using public by reason of the fact that the users of said infringing books will call numbers which have been discontinued or changed, all to the expense and detriment of plaintiff and the telephone using public.

XIII.

Plaintiff has been informed by defendants that they are now at work in preparing additional infringing telephone books and more particularly one for the City and County of San Francisco, State of California, and are soliciting advertising subscriptions therefor, the lists of subscribers for which are being taken from plaintiff's copyrighted telephone directories.

XIV.

The deliberate and premeditated copying and piracy by defendants, in appropriating plaintiff's copyrighted [7] material for use in palming off on its subscribers inaccurate telephone directories, for the purpose of selling advertising, constitutes an unconscionable and inexcusable fraud upon the telephone using public, and has resulted in manifold wrong and irreparable damage and injury to plaintiff, and will continue to do so.

XV.

Copies of plaintiff's said copyrighted books and a copy of said defendant's infringing books are filed herewith.

XVI.

Defendants have been duly, specifically and directly notified of their infringement of said copyrighted books, but nevertheless, plaintiff is informed and believes and therefore avers, have continued to infringe, and are now threatening to continue to infringe, said copyrights, to the great and irreparable loss, damage and injury of plaintiff.

XVII.

Plaintiff has no adequate remedy at law, and its only remedy is in this Court sitting as a Court of Equity.

Wherefore, by reason of the premises, and in conformity with the statutes of the United States, plaintiff prays that:

1. The defendants, and each of them, as a firm, and as individuals, as well as their associates, servants, employees, attorneys and assigns, and each and all of them, may be enjoined and restrained by a temporary restraining order and by injunction, preliminary until final hearing, and perpetual thereafter, from directly or indirectly printing, publishing, disposing of or causing or permitting the printing, publication, sale, delivery or disposition of the aforesaid books entitled as above, or any [8] other telephone or other book of any class or description copied in whole or in part from plaintiff's copyrighted telephone directories and each, all and every part and portion thereof.

2. The defendants, and each of them, be decreed to pay plaintiff such damages as plaintiff may have suffered due to the infringement of plaintiff's copyrights, as well as all profits which defendants may have realized from such infringement.

3. The defendants, and each of them, pay to plaintiff one dollar for each copy of defendants' books infringing plaintiff's copyrighted books made, disposed of, or found in the possession of defendants, or their associates, agents or employees, or anyone in their behalf.

4. The defendants, and each of them, be required to render a full and complete accounting for profits and such damages as are provided by law.

5. The defendants, and each of them, be required to deliver up, to be impounded during the pendency of this action, upon such terms and conditions as to the court may seem just and equitable, all such infringing books.

6. The defendants, and each of them, be required to deliver up for destruction all of such infringing copies, as well as all plates, molds, matrices, or other means of making such infringing copies.

7. The defendants, and each of them, be required to pay the full cost of this proceeding, including reasonable attorneys' fees to be taxed as costs.

8. The defendants, and each of them, be required to answer this bill of complaint.

9. This court issue a temporary restraining order [9] and then a preliminary and permanent injunction enjoining and restraining the said defendants, and each of them, and their associates, agents, attorneys, employees and assigns, and any other person acting for them, directly or indirectly, in the manner and form aforesaid, and for a writ directed to the Marshal of this District, commanding the said marshal to seize said infringing articles, upon the posting herein by plaintiff of an undertaking in the manner and form and in the amount to be fixed by this court, and for a writ of subpoena to issue out of this court and under the seal thereof, directed to the said defendants, and each of them,

commanding them to be and appear before this Honorable Court on a day certain therein named.

PILLSBURY, MADISON &
SUTRO

Solicitors for Plaintiff. [10]

State of California,
City and County of San Francisco—ss.

W. G. KLEINSCHMIDT, being first duly sworn, deposes and says: That he is an officer, to wit, the Secretary, of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, the plaintiff in the above entitled suit, and as such makes this affidavit for and on behalf of said corporation; that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

W. G. KLEINSCHMIDT

Subscribed and sworn to before me this 15th day of October, 1935.

[Notarial Seal]

FRANK L. OWEN

Notary Public in and for the City and County of
San Francisco, State of California. [11]

EXHIBIT "A"

THE PACIFIC TELEPHONE AND TELE-
GRAPH COMPANY,

San Francisco, Calif.

Title of book: Telephone Directory San Francisco
California and Bay Counties. May 1935.

By The Pacific Telephone and Telegraph Company,
of the United States.

Date of publication Apr. 29, 1935.

Affidavit received May 11, 1935.

Copies received May 13, 1935.

Entry: Class AA, No. 173843.

[Seal]

WM. L. BROWN

Register of Copyrights.

U. S. Government Printing Office: 1931

AA

LIBRARY OF CONGRESS
COPYRIGHT OFFICE OF THE
UNITED STATES OF AMERICA
WASHINGTON

CERTIFICATE OF COPYRIGHT
REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the

Act of 1909, together with the AFFIDAVIT prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of 28 years from the date of publication of said book has been duly made in the name of

(over) [12]

EXHIBIT "B"

THE PACIFIC TELEPHONE AND TELE-
GRAPH COMPANY,
San Francisco, Calif.

Title of book: Telephone Directory, Oakland California, Alameda, Berkeley, San Leandro and Bay Counties. May 1935.

By the Pacific Telephone and Telegraph Company
of the United States.

Date of publication Apr. 29, 1935.

Affidavit received May, 1935.

Copies received May 13, 1935.

Entry: Class AA, No. 173844.

[Seal] WM. E. BROWN

Register of Copyrights

U. S. Government Printing Office: 1931

AA

LIBRARY OF CONGRESS
COPYRIGHT OFFICE OF THE
UNITED STATES OF AMERICA
WASHINGTON

CERTIFICATE OF COPYRIGHT
REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the Act of 1909, together with the AFFIDAVIT prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of 28 years from the date of publication of said book has been duly made in the name of

(over) [13]

[Endorsed]: Filed Nov 15 1935.

[Title of Court and Cause.]

ORDER TO SHOW CAUSE

Upon reading the verified bill of complaint herein filed on the 26th day of October, 1935, and the return of subpoena herein served on the defendants herein on the 13th and 15th day of November, [14] 1935, and upon motion of the plaintiff by its counsel, Messrs. Pillsbury, Madison & Sutro,

It is ORDERED, ADJUDGED and DECREED that the defendants, and each of them, herein show cause if any they, or either of them, have, before the District Court of the United States for the Northern District of California, Southern Division, in the Post Office Building in the City and County of San Francisco, Room 332 thereof, on the 25th day of November, 1935, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why a preliminary injunction should not issue pendente lite as prayed for in the bill of complaint herein enjoining the defendants, and each of them, as a firm and as individuals, as well as their associates, servants, employees, attorneys and assigns, and each and all of them, from directly or indirectly printing, publishing, disposing of or causing or permitting the printing, publication, sale, delivery or disposition of alleged telephone directories entitled "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935," or any other telephone or other book, of any class or description copied in whole or in part from plaintiff's copyrighted telephone directories and each, all and every part and portion thereof and that defendants, and each of them, at said time and place also show cause why plaintiff should not have such other and further relief in the premises as may be just and proper.

It is further ORDERED, ADJUDGED and DECREED that sufficient cause having been shown, service of this order may be made on the defend-

ants, and each of them, on or before the 19th day of November, 1935, which shall be sufficient [15] service.

Dated: Nov. 15, 1935.

A. F. ST. SURE

United States District Judge

[16]

[Endorsed]: Filed Nov 21 1935.

[Title of Court and Cause.]

AFFIDAVIT OF A. C. CALENDER

State of California,

City and County of San Francisco—ss.

A. C. CALENDER, being first duly sworn, deposes and says: That he is a District Commercial Manager of The Pacific Telephone and Telegraph Company, plaintiff above named. On July 24, 1935, at defendants' house at 3578 California Street, on August 19, 1935, in affiant's office, and on September 10, 1935, in the office of [17] Samuel L. Wright, Esq., of Messrs. Pillsbury, Madison & Sutro, solicitors for the plaintiff in the above entitled cause, defendant, Fred S. Leon, informed affiant that defendants had copied all of the names and telephone numbers in defendants' East Bay numerical telephone directory entitled "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935," from the May, 1935, issue of plaintiff's Oakland, Alameda, Berkeley, San Leandro

and Bay Counties Telephone Directory; and further affiant sayeth not.

A. C. CALENDER

Subscribed and sworn to before me this 21st day of November, 1935.

[Seal] W. W. HEALEY

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires August 29, 1937. [18]

[Endorsed]: Filed Nov 21 1935.

[Title of Court and Cause.]

AFFIDAVIT OF P. R. CLEMENTS

State of California,
City and County of San Francisco—ss.

P. R. CLEMENTS, being first duly sworn, deposes and says: That he is an employee of The Pacific Telephone and Telegraph Company. He purchased a copy of defendants' San Francisco and other counties and towns numerical telephone directory entitled "San Francisco and [19] Other Counties and Towns Numerical Telephone Directory" on November 14, 1935, which is the first day, he is advised, said directories were placed on sale to the public, from the defendant, Dagmar Leon, at the defendants' office, Room No. 781, Monadnock Building, San Francisco, for \$10.30.

Affiant has made a check of all known errors in plaintiff's May, 1935, issue of its San Francisco and

Bay Counties Telephone Directory, and each one of these errors, whether in the name of the subscriber or telephone number, appears in defendants' "San Francisco and Other Counties and Towns Numerical Telephone Directory."

Affiant is advised that eight listings, that is, the names, telephone numbers and addresses of subscribers of plaintiff, have been omitted from plaintiff's May, 1935, issue of its San Francisco and Bay Counties Telephone Directory. None of these listings appear in defendants' "San Francisco and Other Counties and Towns Numerical Telephone Directory." Fifteen listings appear in said issue of plaintiff's said directory which were obsolete, that is, the subscribers should no longer have the listings as they appear in said issue of plaintiff's said directory. All of these fifteen listings appear in defendants' said numerical directory.

Affiant is advised that over 4,000 of plaintiff's subscribers in San Francisco have nonpublished listings which do not appear in plaintiff's telephone directories. Affiant selected at random twenty-eight of these nonpublished listings and none of them appear in defendants' said numerical directory.

Since the publication of the May, 1935, issue of plaintiff's San Francisco and Bay Counties Telephone Directories, plaintiff has received several hundred new subscribers. Affiant picked at random twenty-five names of these new customers and no one of their names or [20] listings appear in defendants' said numerical directory; and further affiant sayeth not.

P. R. CLEMENTS

Subscribed and sworn to before me, this 21 day of November, 1935.

[Notarial Seal]

W. W. HEALEY

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires August 29, 1937. [21]

[Endorsed]: Filed Nov 25 1935.

Receipt of a copy of the within Affidavit is hereby admitted this 25 day of Nov. 1935.

JAS. M. NAYLOR

Attorney for Dfts.

[Title of Court and Cause.]

AFFIDAVIT OF P. R. CLEMENTS

State of California,

City and County of San Francisco—ss.

P. R. CLEMENTS, being first duly sworn, deposes and says: That he is an employee of The Pacific Telephone and Telegraph Company; Attached hereto and marked Exhibit "A" is a list which shows the [22] errors, omissions and obsolete listings which appear in both plaintiff's May, 1935, issue of its Oakland, Alameda, Berkeley, San Leandro and Bay Counties Telephone Directory, and in defendants' Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935.

Attached hereto and marked Exhibit "B" is a list of the errors, omissions and obsolete listings which appear in both plaintiff's May, 1935, issue

of its San Francisco and Bay Counties Telephone Directory, and in defendants' San Francisco and Other Cities and Towns Numerical Telephone Directory, 1935-1936.

The third column of each said exhibit shows the listings in their correct form as they should have appeared in plaintiff's said directories and the listings which should not appear in plaintiff's said directories; and further affiant sayeth not.

P. R. CLEMENTS

Subscribed and sworn to before me this 25th day of November, 1935.

[Notarial Seal]

FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [23]

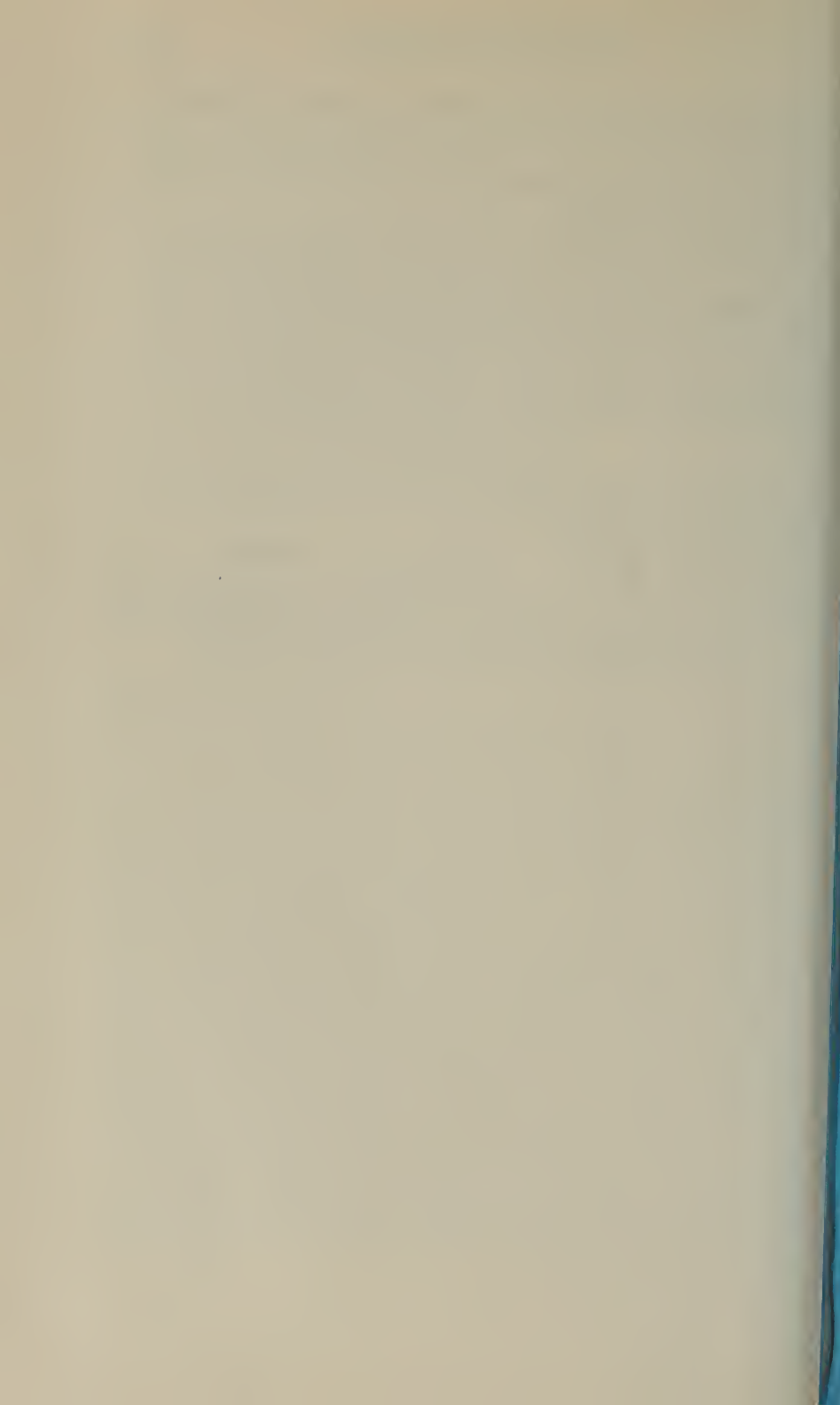


EXHIBIT "A"

Check of East Bay Alphabetical Listing Errors and Omissions of May
1935 Bay Counties Directory against Numerical Telephone Directory—
Oakland, Berkeley, Alameda, San Leandro, 1935

East Bay Alphabetical Errors May 1935 Bay Counties Directory		East Bay Alphabetical Errors 1935 Numerical Telephone Directory		Correct Listing Should Read
Benjamin J K	ME rritt 2984		Same	(Should not appear)
Browne F R	FR uitvale 7512-W		"	(Should not appear)
Cliff J D	PI edmont 6333-W		"	<i>Cliff J D</i> PI edmont 6333-W
Conlon M T Lt	HI ghgate 3345	Conlon M T	HI ghgate 3345	Conlon M J Lt HI ghgate 3345
Egstrom O G	FR uitvale 7675-J		Same	<i>Engstrom O G</i> FR uitvale 7675-J
(Fraser J P	AN dover 4006)Omitted		"	Fraser J P AN dover 4006
Gift May W	GL encourt 6635		"	Gift May W GL encourt 6635
(Greenlaw C Merrill	OL ympic 0234)Omitted		"	Greenlaw C Merrill OL ympic 0234
Hall Jeannette Mrs	BE rkeley 3208	Hall J Mrs	BE rkeley 3208-W	Hall Jeannette Mrs BE rkeley 3208-R
Haller Paul H	OL ympic 3258		Same	Haller Paul H OL ympic 3680
Hoffman Harry G	AN dover 6422		"	(Should not appear)
Jones C W Mrs	OL ympic 5024		"	Jones C W Mrs <i>HU mboldt 5239</i>
Kaufman L E	OL ympic 8086		"	Kaufman L E OL ympic 8886
Kiosterud Roland	AN dover 1938		"	Kiosterud Roland AN dover 1538
McKay's Automotive Repair	GL encourt 0373		"	<i>McKay Auto-</i> motive Repair GL encourt 0373
McKenna Marian	HI ghgate 1689		"	McKenna <i>Marion</i> HI ghgate 1689
Monohan H	HU mboldt 2185		"	Monohan H <i>OL ympic 8088</i>
(National Shirt Shops Inc	HO lliday 5706) Omitted		"	National Shirt Shops Inc HO lliday 5706
O'Brien Alice W Miss	FR uitvale 2607-J		"	O'Brien Alice W Miss FR uitvale 3452-M
Parsons F C Mrs				
School St Pharmacy	FR uitvale 5620	Parsons F C Mrs.	FR uitvale 5620	(Should not appear)
Reed H Arthur Mrs.	AL ameda 4738-W		Same	Reed H Arthur AL ameda 4738-M
Perrin O J	HI ghgate 9746		"	(Should not appear)
Robertson Earl	FR uitvale 4851-J		"	(Should not appear)
Ross Frank Mrs.	TE mplebar 0944	Rose Frank Mrs.	TE mplebar 0944	(Should not appear)
Sacramento Ostrich Feather Works	HO lliday 3776		Same	(Should not appear)
Smith Charles J	SW eetwood 1889	Smith Charles	SW eetwood 1889	Sweetwood 1889
Snyder H O	FR uitvale 2972-J		Same	Snyder H O FR uitvale 2976-J
Sommarstrom Edw	TE mplebar 1548		"	(Should not appear)
Stanley Refrigerator Co	TE mplebar 2549	Stanley Ref Co	TE mplebar 2549	Stanley Refrigerator & <i>Fixture Co.</i> TE mplebar 2549
Sutherland Evelyn Mrs	OL ympic 0767		Same	Sutherland Evelyn Mrs OL ympic 0761
Thompson Donald F	ME rritt 3670		"	(Should not appear)
Testesman Ella M	FR uitvale 8863-J		"	<i>Testerman Ella M</i> FR uitvale 8863-J
White Cyrus E	AS hberry 7345		"	White Cyrus E AS hberry 3745

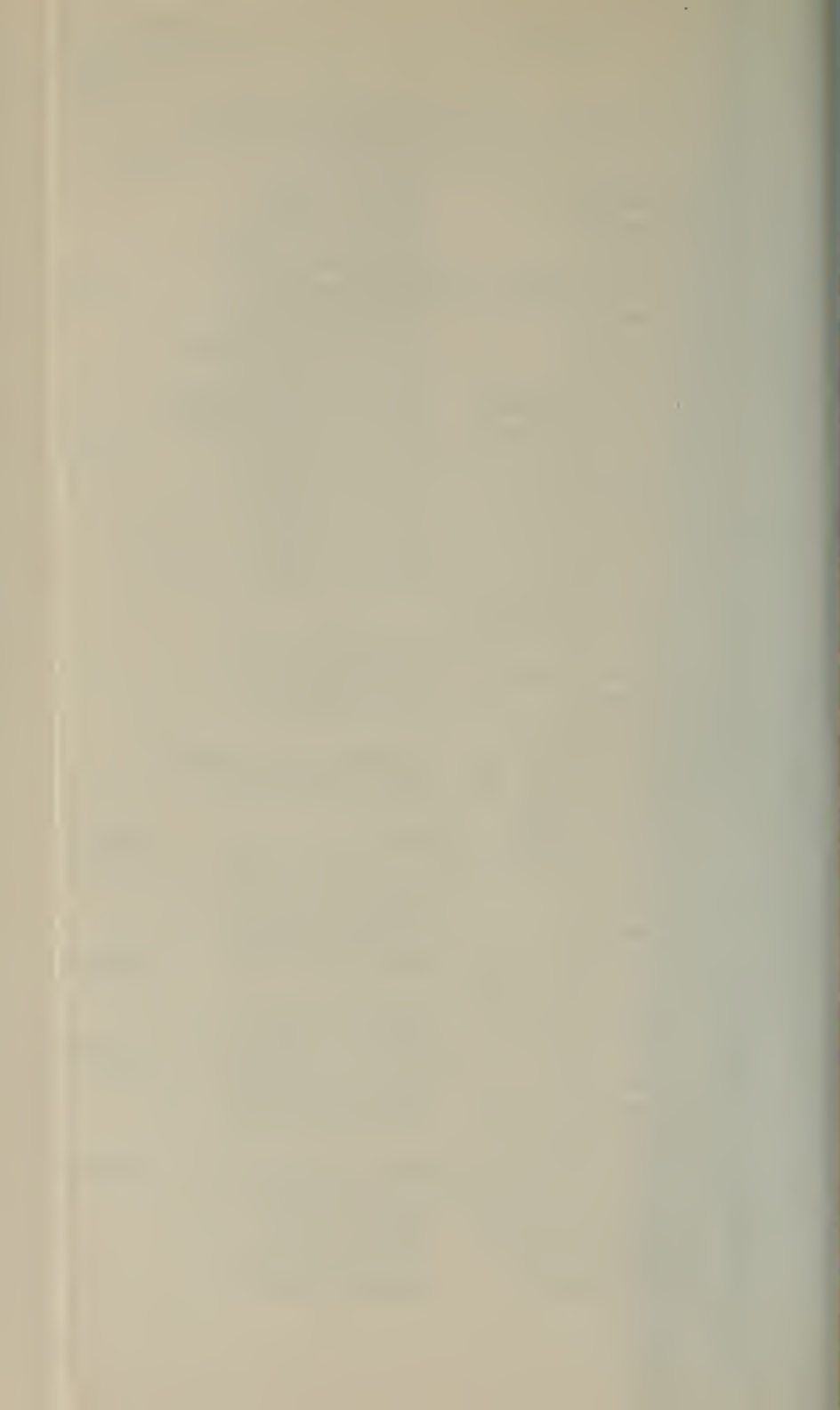
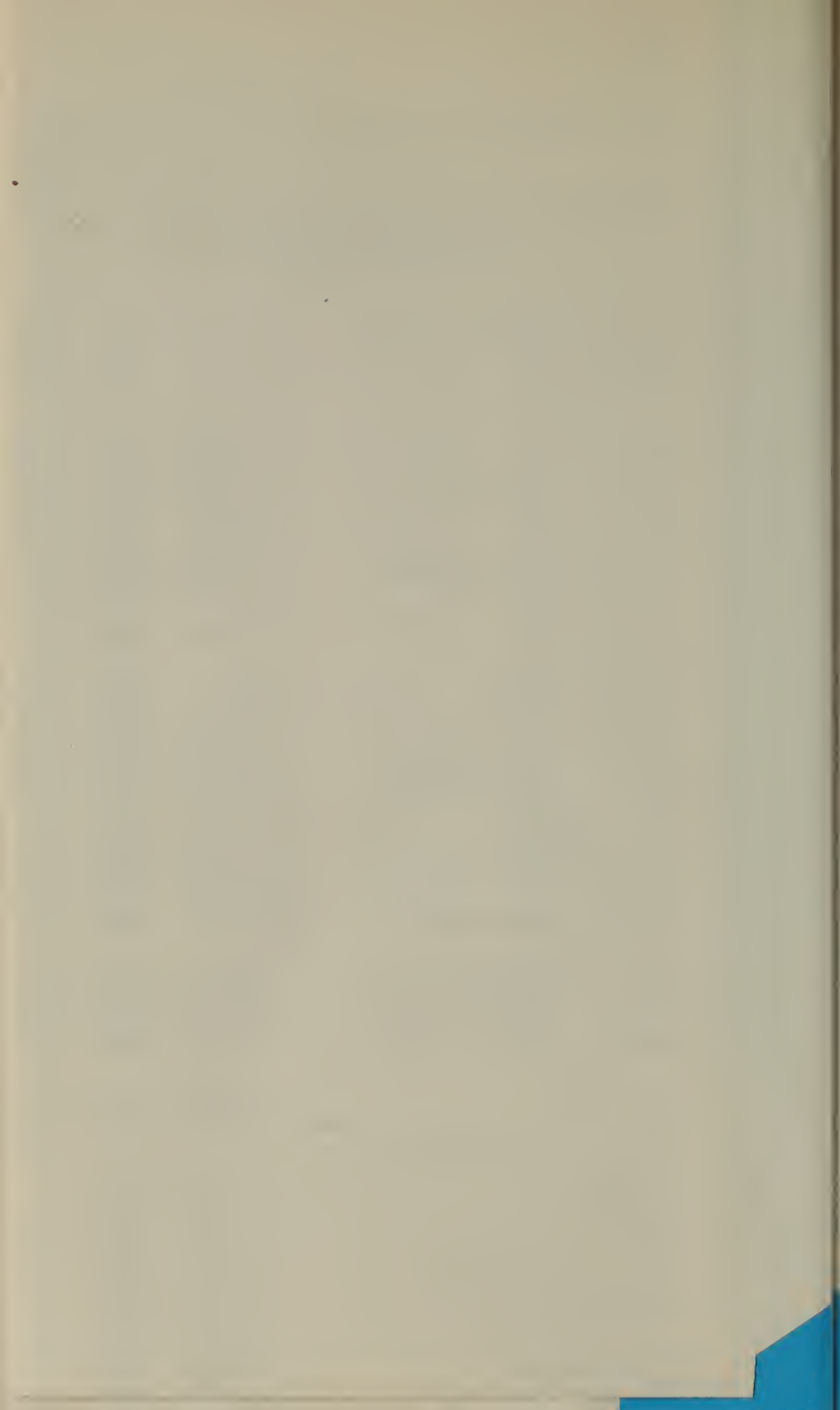


EXHIBIT "B"

Check of San Francisco Alphabetical Listing Errors and
Omissions of May 1935 Bay Counties Directory Against
Numerical Directory—San Francisco 1935-6.

San Francisco Alphabetical Errors May 1935 Bay Counties Directory			San Francisco Alphabetical Errors May 1935-6 Numerical Telephone Directory			Correct Listing Should Read		
Omitted			Omitted			Baciocco Frederick J	SK yline	1692
Bailey Minnie Mrs	PR ospect	8751	Bailey Minnie Mrs	PR ospect	8751	Bailey Minnie E Mrs	PR ospect	8751
Blakiston U G	HE mlock	4139	Blakiston U G	HE mlock	4139	Blackiston V G	HE mlock	4139
Omitted			Omitted			Bergner G	SU tter	7539
Best Richard E	RA ndolph	1942	Best Richard	RA ndolph	1942	Should not appear		
Biller John	FI llmore	8218	Biller J	FI llmore	8218	Biller John	FI llmore	8276
Bowden Henry Mrs	BA yview	1822	Bowden Henry Mrs	BA yview	1822	Dowden Henry Mrs	BA yview	1822
Bruner P M	OR dway	5107	Bruner P M	OR dway	5107	Bruner P M	PR ospect	6394
Card Myrtle	OR dway	9763	Card Myrtle	OR dway	9763	Should not appear		
Crowley Fagiola Torrison	OR dway	1373	Crowley Fagiola T Dr	OR dway	1373	Crowley Fagiola Torrison	OR dway	1373
Omitted			Omitted			Dalton J L	AT water	0332
Darling Gloria	OR dway	5208	Darling Gloria	OR dway	5208	Should not appear		
Omitted			Omitted			De Bretteville Alexander	OR dway	9358
Digrazia Guido P	WE st	1198	Digrazia G P	WE st	1198	Di Grazia Guido P	WE st	1198
Driscoll John G	SK yline	7017	Driscoll John G	SK yline	7017	Driscoll John F	SK yline	7017
Erkeley Sidonia M M D	WA lnut	0051	Erkeley Sidonia M Md	WA lnut	0051	Erkeley Sidonia M Mme	WA lnut	0051
Esperance Elizabeth Mrs.	HE mlock	8731	Esperance Elizabeth	HE mlock	8731	Should not appear		
Evans Phyllis	MA rket	1072	Evans Phyllis	MA rket	1072	Should not appear		
Garcia Marcos E	GR aystone	9087	Garcia M E	GR aystone	9087	Gracia Marcos E	GR aystone	9087
Graham H B Dr	PR ospect	4400	Graham H B Dr	PR ospect	4400	Should not appear		
Hayman J	SK yline	4069	Hayman J	SK yline	4069	Haymann J	SK yline	4069
Hooper Holmes Bureau	EX brook	0879	Hooper Holmes	EX brook	0879	Should not appear		
Omitted			Omitted			Horton Ross A	BA yview	6870
Husting Elizabeth	GR aystone	2272	Husting Eliz	GR aystone	2272	Should not appear		
Jacobs George R	OV erland	0485	Jacobs George R	OV erland	0485	Jacob George R	OV erland	0485
Juchlenz William	SK yline	4335	Juchlenz Wm	SK yline	4335	Kuchlenz William	SK yline	4335
Omitted			Omitted			Kane Chas F & Co	MA rket	0523
Keane Gene	DE laware	9062	Keane Gene	DE laware	9062	Should not appear		
Kimball Bernice M	PR ospect	3133	Kimball Bernice M	PR ospect	3133	Should not appear		
Liberty Cleaning & Dyeing Works The	HE mlock	0311	Liberty Cleaning & Dyeing	HE mlock	0311	Liberty Cleaning & Dyeing Works The	HE mlock	0100
Masi L R	BA yview	8054	Masi L R	BA yview	8054	Masi L R	SK yline	3592
McKenney Carol Dr	TU xedo	2910	McKenney Carol Dr	TU xedo	2910	Should not appear		
McLaughin Charlotte	OV erland	7152	McLaughlin C	OV erland	7152	Should not appear		
Meade J Fred	UN derhill	4511	Meade J Fred	UN derhill	4511	Should not appear		
Omitted			Omitted			Parcells F M	DO uglas	2595
Peters Alma B	UN derhill	5364	Peters Alma B	UN derhill	5364	Should not appear		
Pittsburg Chemical Co.	EL kridge	4334	Pittsburg Chemical Co	EL kridge	4334	Pittsberg Chemical Co	EL kridge	4334
Powers John J	VA lencia	1879	Powers John J	VA lencia	1879	Should not appear		
Richbieth H W Mrs	HE mlock	3075	Richbieth H W Mrs.	HE mlock	3075	Rischbieth H W Mrs	HE mlock	3075
Robinson G Gilbert	WA lnut	3783	Robinson G Gilbert	WA lnut	3783	Robinson C Gilbert	WA lnut	3783
Severance Ford C	MI ssion	4694	Severance Ford C	MI ssion	4694	Severance Fred C	MI ssion	4694
Omitted			Omitted			Stark Charles M	GR aystone	0151
Sugarman Edw I	DO uglas	7167	Sugarman Edw	DO uglas	7167	Sugarman Edw I	DO uglas	7168



[Endorsed]: Filed Nov 25 1935.

[Title of Court and Cause.]

DEFENDANTS' AFFIDAVIT IN REPLY TO
ORDER TO SHOW CAUSE.

State of California

City and County of San Francisco—ss:

Fred S. Leon, being first duly sworn, deposes and says:

1. That he is the party by that name sued herein as one of the parties defendant.

2. That he is the sole proprietor of and doing business as the Numerical Telephone Directory.

3. That the Numerical Telephone Directory referred to in the bill of complaint on file herein was prepared under affiants' personal supervision by a staff of employees employed [26] for that purpose; that a great amount of time was spent in compiling, arranging and collating the information contained in said directory, the work having been commenced in January 1935 and finished in July 1935.

4. That the circumstances which gave rise to the preparation and publication of the Numerical Telephone Directory were that the Plaintiff herein, The Pacific Telephone & Telegraph Company, for reasons best known to itself, refuses to furnish the general public gratis information as to the name of a subscriber to a particular telephone number; that it is impossible for a member of the general public to ascertain the name of a subscriber to a particular telephone number without actually calling the number in question, which is many times not desirable,

the only other method being the months of study required to locate the particular number in question in the alphabetical directory published by plaintiff.

5. That the Numerical Telephone Directory performs a service of distinct advantage not rendered by plaintiff's alphabetical directory and which plaintiff refuses to render members of the general public and is therefore for purposes other than those for which plaintiff's telephone directory was intended.

6. That the principal use to which affiants' Numerical Telephone Directory is put by the general public is as follows:

(a) One telephone user phones another and, finding him absent, leaves his phone number.

(b) The person called upon returning to his place of business may find several such numbers. If unfamiliar with a specific number, he refers to the Numerical Telephone Directory for identification of the source of the call, eliminating, as an element of time saving, those calls which he knows to be unnecessary or undesirable. [27]

7. That the use of affiants' book will not and does not impede or hamper the telephone using public because of numbers which have been discontinued or changed, for the reason that the principal use to which affiants' book is put consists in identification of the person whose telephone number has been left for call, and since such numbers are left by the subscriber himself it is presumed that he will give his correct number, even though plaintiff's then

current directory does not list the subscriber at all or does list him under some other number.

8. That among the purchasers of affiants' books are many of the leading banking, industrial and mercantile establishments of Alameda County and the City and County of San Francisco, and affiants' book has received widespread endorsement and approval as rendering a distinctly beneficial service not otherwise available to such purchasers.

9. That the purpose of affiants' Numerical Telephone Directory, is as aforesaid, to furnish a unique service incidental to the use of telephones and is of distinct benefit to the general public, including plaintiff's subscribers; that affiants' purpose in publishing his Numerical Telephone Directory was not to sell advertising space in said books; that it was affiants' original intention not to sell any advertising space whatsoever; that the space sold resulted from the insistent demand of merchants, tradesmen, the professions and others in business, and that the amount of space so sold is inconsequential in comparison with the books as a whole; that the advertising copy in defendants' Numerical Telephone Directory is original work created by affiant or advertisers therein, with two known exceptions and in those instances the subscribers delivered the material to be used to affiant and represented that such was their personal property.

10. Affiant does not deny that the May 1935 issue of plaintiff's telephone directory was employed

by him as the [28] source reference for the Numerical Telephone Directory, but affiant does deny that valuable and/or material portions of plaintiff's copyrighted books were copied or transferred into affiants' Numerical Telephone Directory or that any of the matter in affiants' book was copied from plaintiffs' books with substantially no change. Affiant further denies that the intellectual product of plaintiff, if any there be, was copied by him from plaintiff's books in the preparation of said Numerical Telephone Directory.

11. That it may be true that affiants' Numerical Telephone Directory contains errors and mistakes also contained in plaintiff's books but such would be the necessary result considering the fact that the plaintiff, being a public utility serving this territory exclusively, is the sole and original source of all information relative to telephone numbers, and plaintiff's telephone directories must be relied upon and plaintiff intends that they shall be relied on.

12. That in addition to publication of the book entitled "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935" affiant has published a book entitled "Numerical Telephone Directory San Francisco and other cities and towns 1935-6".

13. That affiant has caused Two Thousand (2,000) volumes of his two books, entitled as above, to be printed and published; that approximately Seven Hundred (700) volumes have been sold and approximately One Thousand Three Hundred (1,300) volumes remain unsold; that the sale price of each of said books is Seven Dollars and fifty

cents (\$7.50) and Ten Dollars (\$10.00), respectively; that affiant has on hand books worth the sum Thirteen Thousand Seven Hundred and Fifty Dollars (\$13,750.00).

FRED S. LEON. [29]

Subscribed to and sworn before me, a notary public, this 25th day of November, 1935.

[Seal] VIOLET NEUENBURG,
Notary Public in and for the City and County of
San Francisco, State of California. My Com-
mission expires December 31, 1938. [30]

[Title of Court.]

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 25th day of November, in the year of our Lord one thousand nine hundred and thirty-five.

PRESENT: the Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

After hearing attorneys for the respective parties, it is ordered that the application for injunction pendente lite be granted, and that plaintiff give a bond in the sum of \$20,000.00 upon said injunction.

[31]

[Endorsed]: Filed Dec. 20, 1935.

[Title of Court and Cause.]

ANSWER OF DEFENDANT FRED S. LEON.

The defendant, Fred S. Leon, for answer to the Bill of Complaint herein, says:

I.

Said defendant admits the allegations of Paragraph I.

II. [32]

Said defendant admits the allegations of Paragraph II insofar as his citizenship is concerned, but denies that he is an inhabitant of the City of Oakland, County of Alameda, State of California, and alleges the fact to be that he is a resident of the City and County of San Francisco, State of California.

III.

Said defendant admits the allegation of Paragraph III.

IV.

Said defendant admits the allegations of Paragraph IV except as to the alleged cost of publishing plaintiff's telephone directories for the May, 1935 editions and denies that the sum was Two hundred ninety-five thousand and Two hundred and twenty-two dollars (\$295,222.00) and alleges the facts to be that plaintiff either made a profit on the publication of said telephone directories for May, 1935 or charged the cost thereof to operating expenses and that the same was distributed prorata among plain-

tiff's subscribers and included in the prevailing rate for telephone service as allowed to plaintiff by the California Railroad Commission.

V.

Answering Paragraph V, said defendant states he has no information and belief and therefore denies the allegation in said paragraph contained.

VI.

Answering Paragraph VI of the bill of complaint herein, said defendant admits that plaintiff is the author and proprietor of said directories but denies that it duly copyrighted them under the Copyright Laws of the United States; denies that copyrights were secured unto plaintiff by publication of said directories accompanied by the statutory notice; but admits that plaintiff deposited copies of the said directories with the Register of Copyrights. [33]

VII.

Answering Paragraph VII of the bill of complaint herein, said defendant admits that affidavits accompanied the deposit of the copies of the said directory deposited with the Register of Copyrights but denies that the plaintiff had duly done or performed all acts or complied with all requirements necessary to establish its alleged rights to the aforesaid copyrights under the statutes of the United States in such cases made and provided, and denies that any rights could be established by plaintiff in said directories under the copyright Acts of the United States.

VIII.

Answering Paragraph VIII, said defendant admits that the Register of Copyrights issued to plaintiff alleged certificates of copyright of said issues of said directories but denies that said certificates are valid or that they establish in plaintiff the exclusive right to copy said directories.

IX.

Answering Paragraph IX of said bill of complaint said defendant states he has no information and belief and therefore denies that commencing with the issue of October 1908 and continuously thereafter to and including the May, 1935 issue of said directories plaintiff has duly or legally copyrighted each of the said directories.

X.

Answering Paragraph X, defendant denies that the collection, editing, compilations, classification, arrangement or preparation of the material included in said directories required discretion, judgment, painstaking care, skill or experience of a high order and alleges the facts to be that the said work is mere routine arising out of plaintiff's legal duty to its subscribers as required of plaintiff by the California Railroad Commission. Said defendant admits that the result of [34] the labor of the persons employed or paid by plaintiff for those purposes before publication became the property of plaintiff insofar as those persons are concerned but denies that the same became the sole or exclusive property of plaintiff; denies that literary or other

rights arose out of the labor of the persons employed or paid by plaintiff for the purpose of preparing and publishing said directories or that plaintiff solely or exclusively possessed the alleged literary or other rights therein if any there were, and denies that plaintiff or anyone is or was entitled to copyright in said directories.

Answering Paragraph X further said defendant denies that said directories, or either of them, constitute or are, within the meaning of the Copyright Act, new or original literary works, or that the same are proper subject matter for copyright. Said defendant denies that there any any copyrights in said directories or any copyrights therein which are unexpired, still in full force or effect and denies that the plaintiff is the sole or exclusive owner, author or proprietor thereof.

XI.

Answering Paragraph XI defendant admits that plaintiff's telephone directories were employed by him in the collection, compilation, editing and preparation of the material included in his Numerical Telephone Directories and that there is a commonness of errors between plaintiff's directories and defendant's directory but denies the other allegations of said paragraph.

XII.

Answering Paragraph XII said defendant denies the allegations of said paragraph.

XIII.

Answering Paragraph XIII of the bill of complaint, defendant admits that at the time the bill of complaint herein [35] was filed he was at work in preparing a numerical telephone directory for the City and County of San Francisco, State of California, and avers that the same has since been published; admits the solicitation of advertisements therefor but avers that the space purchased therein is a mere incident to the main purpose of said book; admits the use of plaintiff's directories in the compilation of said books, but denies that said books are an infringement of valid copyrights subsisting in plaintiff's said directories, and avers that the use of plaintiff's directories by him was a fair use.

XIV.

Answering Paragraph XIV of the bill of complaint said defendant denies the allegations thereof.

XV.

Defendant admits that copies of his books were filed with the bill of complaint and that copies of plaintiff's directories were also filed but denies that plaintiff's said directories are copyrighted or that defendant's books infringe.

XVI.

Answering Paragraph XVI of the bill of complaint said defendant admits that at various times and places plaintiff notified said defendant of its claim of infringement of alleged copyrighted books but denies that in publishing his books he has in-

fringed or continues to infringe or threatened to continue to infringe valid copyrights alleged to subsist in plaintiff or that plaintiff has been damaged or injured by defendant's publication of his books.

XVII.

Defendant denies the allegations of Paragraph XVII of said bill of complaint.

AND BY WAY OF SEPARATE AND DISTINCT ANSWER AND DEFENSE, SAID DEFENDANT ALLEGES THE FOLLOWING:

[36]

1.

Answering said bill of complaint further, defendant Fred S. Leon alleges that the Numerical Telephone Directories published by him perform a service of distinct advantage not rendered by plaintiff's alphabetical telephone directory and which plaintiff refuses to render members of the general public and is therefore published and distributed for purposes other than those for which plaintiff's telephone directory was and is intended.

2.

Answering said bill of complaint further, defendant Fred S. Leon alleges that the facts and circumstances which gave rise to the preparation and publication of his Numerical Telephone Directories were that the plaintiff herein refuses to furnish the general public information as to the name of a subscriber to a particular telephone number; that

it is impossible for a member of the general public to ascertain the name of a subscriber to a particular telephone number without calling the number in question, which is many times not desirable, the only alternative being the endless task of searching through the list of telephone numbers in plaintiff's alphabetical directory, which numbers are not chronologically arranged.

3.

Answering said bill of complaint further, said defendant, Fred S. Leon, alleges that the use of the Numerical Telephone Directories published by him will not and do not impede or hamper the telephone using public because of numbers which have been discontinued or changed since publication thereof, because the principal use to which said books are put consist in the identification of the person whose telephone number has been left for call, and since such numbers are left by the subscriber himself there is no likelihood of his giving an incorrect or obsolete number for such purpose; that the [37] defendants' numerical telephone directories are as current and up to date as the May 1935 edition of plaintiff's alphabetical telephone directory.

4.

Answering said bill of complaint further, said defendant, Fred S. Leon, alleges that among the purchasers of his said numerical telephone directories are many of the leading banking, industrial and mercantile establishments of Alameda County

and the City and County of San Francisco, and that said book has received widespread endorsement and approval as rendering a distinctly beneficial and meritorious source not otherwise available to such purchasers.

5.

Answering said bill of complaint further, said defendant, Fred S. Leon, alleges that his purpose in publishing his Numerical Telephone Directories, as aforesaid, was not to sell advertising space in said books; that it was his original purpose and intention not to sell any advertising space whatsoever; that the sale of such space resulted from the insistent demand of merchants, tradesmen, the professions and others in business, and that the amount of space so sold is inconsequential in comparison with the books as a whole; that the advertising copy in defendants' Numerical Telephone Directories is original work created by defendant or advertisers therein, with two known exceptions and in those instances the subscribers delivered the material to be used to defendant and represented that such was their personal property.

6.

Answering said bill of complaint further, defendant, Fred S. Leon, alleges that in the compilation and preparation of his Numerical Telephone Directories he referred to the May 1935 issue of plaintiff's alphabetical telephone directory, which is [38] the sole source of current information relative to telephone subscribers arranged in alphabetical form; that it necessarily followed that errors in plaintiff's

alphabetical telephone directory would be repeated in defendants' numerical telephone directories, but defendant denies that in making such use of plaintiff's said book he copied or appropriated original language or literary arrangement therefrom or in any way infringed the same.

7.

Answering said bill of complaint further, and as a further, separate and special defense, said defendant, Fred S. Leon, alleges that plaintiff's alphabetical telephone directories, and particularly the May 1935 issue thereof, consist of matter which is wholly devoid of and lacking in originality or literary concept or language or arrangement, and matter which Plaintiff is obligated to publish in the manner and form alleged under the law as a public utility pursuant to orders of the California Railroad Commission, and therefore said directories are not proper subject matter for copyright under the Copyright Acts of the United States.

8.

Answering said bill of complaint further, and as a further, separate and special defense, said defendant, Fred S. Leon, alleges that the plaintiff in publishing its said alphabetical telephone directories intends that the same shall be used; that they are intended primarily to apprise others of such facts as they contain; that anyone may produce facts therein contained and put them to fair use, and that the use to which said defendant has put them is an example of such fair use.

9.

Answering said bill of complaint further, and as a further, separate and special defense, said defendant, Fred S. [39] Leon, alleges that the alleged cause of action set forth in the bill of complaint on file herein is barred by reason of laches and plaintiff is estopped to maintain its action. Persons other than the defendant herein, subsequent to the year 1908 in which year plaintiff alleges it began publication and copyrighting of its alphabetical telephone directories, have published various numerical and alphabetical telephone directories including therein the names, addresses and telephone numbers of plaintiff's subscribers taken from plaintiff's alleged copyrighted alphabetical telephone directories; that plaintiff has had knowledge of the publication of such numerical and alphabetical telephone directories and has acquiesced in such publication, whereby defendant herein has been led to believe that plaintiff consented and had no objection to such publication of numerical and alphabetical telephone directories including the names, addresses and telephone numbers of its subscribers taken from its said alphabetical telephone directories, and by reason thereof said defendant has made a large investment of time and money in the preparation and publication of his said numerical telephone directories, and by failure to assert its alleged rights against such publication of the aforesaid numerical and alphabetical telephone directories by persons other than the defendant herein, plaintiff is guilty of laches and is estopped to maintain this action, or to demand damages.

Wherefore, defendant, having fully answered the bill of complaint, denies that the plaintiff is entitled to any part of the relief demanded, and prays to be hence dismissed with his costs and reasonable attorneys fees in his behalf most wrongfully sustained, and defendant will ever pray.

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Attorneys and Solicitors
and Defendants. [40]

San Francisco, Calif.,

Dated: December 19, 1935.

Acknowledgment is made of receipt of copy of the foregoing answer, this 20th day of December, 1935.

PILLSBURY, MADISON & SUTRO

Attorneys for Plaintiff [41]

[Endorsed]: Filed Dec. 20, 1935.

[Title of Court and Cause.]

ANSWER OF DEFENDANT DAGMAR LEON

The Defendant, Dagmar Leon, for answer to the Bill of Complaint herein says:

I.

That she is a citizen of the United States and residing in the City and County of San Francisco, State of California. [42]

II.

Said Defendant denies each and every other allegation of said Bill of Complaint, except the allegations contained in Paragraph I of said Bill of Complaint.

III.

Answering said Bill of Complaint further said defendant avers that she is the wife of the defendant Fred S. Leon; that she has no proprietary interest in the business conducted by the said Fred S. Leon under the name and style, Numerical Telephone Directory; that she is a mere employee in said business; and that she has been improperly joined herein as a party Defendant.

Wherefore, said Defendant Dagmar Leon prays the judgment of the court whether she shall be compelled to answer further, and prays that the Bill of Complaint may be dismissed with her costs and reasonable attorneys fees in her behalf most wrongfully sustained and said Defendant will ever pray.

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Attorneys and Solicitors
for Defendants

San Francisco, Calif.,

Dated: December 19, 1935.

Acknowledgment is made of receipt of a copy of the foregoing answer, this 20th day of December, 1935.

PILLSBURY, MADISON & SUTRO

Attorneys for Plaintiff [43]

[Title of Court.]

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 10th day of March, in the year of our Lord one thousand nine hundred and thirty-six.

Present: the Honorable A. F. ST. SURE, District Judge.

[Title of Cause.]

This case came on regularly for trial. N. Korte and James O'Brien, were present as attorneys for plaintiff. J. M. Naylor and Arthur P. Shapro, were present as attorneys for defendants. Counsel for respective parties made a statement as to the nature of the case. Plaintiff called certain persons as witnesses and each duly sworn and examined, to-wit: Henry R. Wolteman, Howard L. Van Orden, Percy R. Clements and A. C. Calendar and introduced in evidence certain exhibits which were filed and marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16. Plaintiff presented another exhibit for identification which was filed and marked 14, and plaintiff rested. Counsel for defendant thereupon moved for Order dismissing the case as to defendant, Dagmar Leon, which motion the Court ordered denied and exception entered. Defendants called certain persons as witnesses and each duly sworn and examined, to-wit: Fred S. Leon, William E. Church and Mrs. Dagmar Leon, and defendants rested. Plaintiff recalled Percy R. Clements as a witness and

was further examined and introduced in evidence an exhibit which was filed and marked 17 and plaintiff rested. Thereupon after hearing attorneys, ordered that briefs be filed in 10—10 and 5 days, and case be then submitted.[44]

[Endorsed]: Filed April 29, 1936.

[Title of Court and Cause.]

MEMORANDUM OF DECISION

Upon the issues raised at the trial and submitted for decision, (1) as to the validity of plaintiff's copyright of its telephone directory, and (2) as to the infringement of plaintiff's copyright by defendants, I am of the opinion that the copyright is valid and has been infringed, and so find. Plaintiff is entitled to a decree making the preliminary injunction heretofore issued permanent, and to judgment for its costs.

Findings of fact, conclusions of law, and decree may be submitted by counsel for plaintiff.

Dated: April 29, 1936.

A. F. ST. SURE
United States District Judge [45]

[Endorsed]: Filed May 22, 1936.

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial on the 10th day of March, 1936, before the Honorable A. F. St. Sure, United States District Judge for the Northern District of California, upon the issues of fact and law made by the complaint and answer thereto. Plaintiff appeared by its attorneys, Messrs. Pillsbury, Madison & Sutro, and defendants appeared by their attorneys James M. Naylor, Esq., and Arthur P. Shapro, Esq. Thereafter documentary and oral [46] evidence was presented, oral argument heard and memoranda filed, and the cause submitted to the court for decision. The court having considered the evidence and arguments of counsel, now makes these

FINDINGS OF FACT

I.

Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California, within the Northern District of California, in the Southern Division thereof, and is engaged within said city and county and district and elsewhere in said state in the business of furnishing general telephone and telegraph service.

II.

Defendants are citizens of the United States and inhabitants of the City and County of San Francisco, State of California, in the Northern District of California, in the Southern Division thereof.

III.

This is a suit arising under the copyright Act of the United States.

IV.

In connection with furnishing said telephone service, plaintiff has published and caused to be printed and distributed to its subscribers, at frequent intervals since October, 1908, alphabetical directories of its subscribers, setting forth in alphabetical order their names, addresses and telephone numbers, among which are those now entitled "Telephone Directory, San Francisco and Bay Counties, May, 1935" and "Telephone Directory, Oakland, Alameda, Berkeley, San Leandro and Bay Counties, May, 1935". Plaintiff has duly and regularly copyrighted each [47] edition of said directories, and the Register of Copyrights at Washington, District of Columbia, has issued to plaintiff for each edition of said directories his certificate of copyright.

Plaintiff compiled, printed, issued and on April 29, 1935, published an edition of said "Telephone Directory, San Francisco and Bay Counties, May, 1935" and an edition of said "Telephone Directory, Oakland, Alameda, Berkeley, San Leandro, and Bay Counties, May, 1935", each of which it duly and

regularly copyrighted and for each of which the Register of Copyrights at Washington, District of Columbia, issued to plaintiff a certificate of copyright. All copies of said May, 1935, editions of plaintiff's said telephone directories were printed from plates made within the limits of the United States, from type set therein, and the printing of the text and binding of said directories was performed within the United States. Thereafter plaintiff published the same within the limits of the United States, which was the first publication thereof, with a notice of copyright affixed on the title page of each copy thereof, as follows: "Copyright, 1935, by The Pacific Telephone and Telegraph Company." After securing said copyright by publication with said notice of copyright, plaintiff promptly deposited in the mail, addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition of said May, 1935, directories then published, which were accompanied by affidavits under the official seal of an officer authorized to administer oaths within the United States, duly made by plaintiff's authorized agent residing in the United States, setting forth that plaintiff had duly done and performed all acts and complied with all requirements necessary to establish its rights to said copyrights under the statutes of the United States in such cases made and provided, and that plaintiff had paid the fees required by the Copyright Act. [48]

V.

The collection, editing, compilation, classification, arrangement, preparation of the material in said directories and the publication of said directories involved a large amount of detail and required great effort, discretion, judgment, painstaking care, skill, labor, accuracy, experience and authorship of high order. Said telephone directories were the sole and exclusive property of plaintiff, and plaintiff possessed the sole and exclusive literary and other rights therein, including the right to copy. Said directories constitute new and original literary works, and are the proper subject of copyright. Said copyrights are existing and plaintiff is the sole and exclusive owner, author and proprietor thereof.

VI.

The copyright of plaintiff's said May, 1935, directories is valid.

VII.

Defendants have compiled, published and sold to the public numerical telephone directories entitled "Numerical Telephone Directory, San Francisco and Other Cities and Towns, 1935-36" and "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935". These numerical directories of defendants were compiled exclusively and solely from plaintiff's May, 1935, directories. Defendants' sole source of information in compiling said numerical directories was plaintiff's said directories. Defendants copied and transferred into said numerical directories, without the con-

sent or license of plaintiff and in violation of plaintiff's rights under its copyrights, valuable and material portions of plaintiff's copyrighted May, 1935, directories, and thus saved themselves the expenditure of a large amount of time, labor and money. Defendants took and appropriated to their own use the entire portion of the alphabetical sections of plaintiff's May, 1935, directories, and did not ob- [49] tain any of the information contained in their numerical directories from original sources or from any source other than plaintiff's said directories. Defendants' said copying of plaintiff's said directories was deliberate and premeditated and infringement constituted ~~piracy and plagiarism~~ [A. F. St. S.] of plaintiff's said directories.

VIII.

Defendants have infringed plaintiff's copyrights of its May, 1935, directories.

From the foregoing Findings of Fact the court makes these

CONCLUSIONS OF LAW

I.

Plaintiff is entitled to a permanent injunction restraining defendants, and each of them, as a firm and as individuals, as well as their associates, servants, employees, attorneys and assigns, and each of them, from directly or indirectly printing, publishing, selling, delivering or disposing of, or causing or permitting the printing, publication, sale delivery or disposition of said "Numerical Telephone Directory, San Francisco and Other

phone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935", or any other directory or book of any class or description, copied, in whole or in part, from plaintiff's said telephone directories entitled "Telephone Directory, San Francisco and Bay Counties, May 1935" and "Telephone Directory, Oakland, Alameda, Berkeley, San Leandro and Bay Counties, May 1935", and each and all and every part and portion thereof.

II.

Defendants, and each of them, are required to deliver up on oath for destruction all copies of their "Numerical Telephone Directory, San Francisco and other Cities and Towns, 1935-36" and "Numerical Telephone Directory, Oakland, Berkeley, Alameda, [50] San Leandro, 1935," which have been heretofore printed, and all plates, molds, matrices, or other means for making said infringing numerical telephone directories.

III.

Plaintiff herein is entitled to recover its costs of suit from defendants, and each of them.

(Signed) A. F. ST. SURE

Judge of the District Court
of the United States

Not approved as to form, as provided in Rule 22 for reasons to be embodied in proposed exceptions to be prepared by J. M. Naylor, Esq.

ARTHUR B. SHAPRO

Attorney for Defendant

Receipt of a copy of the within findings and conclusions of law is hereby admitted this 4th day of May, 1936.

JAS. M. NAYLOR and
ARTHUR B. SHAPRO
Attorneys for Defendants. [51]

[Endorsed]: Lodged May 4, 1936. Filed and entered May 22, 1936.

In the Southern Division of the District Court of the United States, for the Northern District of California

In Equity—No. 3943-S

THE PACIFIC TELEPHONE AND TELE-
GRAPH COMPANY, a corporation,
Plaintiff,

vs.

FRED S. LEON and DAGMAR LEON, doing
business as Numerical Directory Co.,
Defendants.

DECREE GRANTING PERMANENT
INJUNCTION

This cause came on for further and final hearing at this term, upon the evidence of all parties hereto, and was argued by counsel, and thereupon, upon due consideration thereof, it was ordered, adjudged and decreed as follows, to-wit:

1. The preliminary injunction entered in this cause on the 25th day of November, 1935, be and the same is hereby made permanent and perpetual against the said defendants and each [52] of them.

2. Defendants and each of them, as well as their associates, servants, employees, attorneys and assigns and each and all of them, are permanently enjoined and restrained from directly or indirectly printing, publishing, selling, delivering or disposing of or causing the printing, publication, sale, delivery or disposition of those certain telephone directories entitled "Numerical Telephone Directory, San Francisco and Other Cities and Towns, 1935-36" and "Numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935" or any other directory or book of any class or description copied in whole or in part from plaintiff's "Telephone Directory, San Francisco and Bay Counties, May, 1935" or from plaintiff's "Telephone Directory, Oakland, Alameda, Berkeley, San Leandro and Bay Counties, May, 1935", and each and all and every part and portion thereof.

3. It is further ordered, adjudged and decreed that the defendants and each of them are to deliver up on oath to the United States Marshal for the Northern District of California for destruction all copies of their telephone directories mentioned in paragraph 2 of this decree which have heretofore been printed, and all plates, molds, matrices, or other means for making said infringing telephone directories.

4. It is further ordered, adjudged and decreed that the costs herein in the sum of \$..... to be taxed by the clerk of this court be paid by the defendants to the plaintiff.

Dated: May 22, 1936.

A. F. ST. SURE

Judge of the District Court
of the United States

Not approved as to form, as provided in Rule 22 for reasons to be embodied in proposed exceptions to be prepared by J. M. Naylor, Esq.

ARTHUR B. SHAPRO

Attorney for Defendants [53]

[Endorsed]: Filed Nov. 27, 1936.

[Title of Court and Cause.]

DEFENDANTS' PROPOSED STATEMENT OF
EVIDENCE ON APPEAL AS REQUIRED
BY EQUITY RULE 75.

Come now the defendants and appellants above named, and submit the following as their proposed statement of evidence to be used upon the appeal heretofore allowed in the above matter as required by Equity Rule 75: [54]

This cause came on for trial in the District Court at San Francisco, California, Hon. A. F. St. Sure, presiding. The trial commenced on March 10, 1936, and was concluded on the same day.

The following is the testimony of the witnesses in narrative form:

HENRY R. WOLTMAN

Witness called by the plaintiff testified substantially as follows:

I am the directory manager of the Pacific Telephone & Telegraph Company in this area. It is the publication of and gathering together of information that is used in the publication of the telephone directories in this area, San Francisco, Oakland and so on; that is under my supervision. I have other employees under me. There is a regular department of the company devoted to the compiling and publication of the telephone directories.

In listing our customers in the directory, the first thing we take from a customer is the application for service, and determine from him the directory listing, the name, address, etc. That application is kept in our business office. The application is not kept alphabetically. It is kept by telephone number order. They are divided up by prefix. By "prefix" I mean the name of the exchange in which the particular subscriber's name is, like the name "At-water". This is an application purporting to be the application of "Bailey, Minnie E. Mrs." This is what we call the basic record of our subscriber. The telephone number is in this corner, here, looking at the upper right-hand corner. The number of Mrs. Bailey's last telephone is Prospect 8751. Originally it was Ordway 1019. When it was Ordway 1019 this record was kept in our business office in a file with all of the other subscribers having the Ordway prefix. They are kept in numerical

(Testimony of Henry R. Woltman.)

order in that file. When the number was changed to that prefix, to that [55] Prospect number, an order was issued from the business office to change it. Then the card was transferred from the Ordway file to the Prospect file, to its corresponding place numerically.

The telephone company issues a directory for the San Francisco subscribers. That directory is in one volume. The make-up of the volume for the San Francisco subscribers is, first, the San Francisco alphabetical directory section. All of the subscribers in San Francisco who had service at the time of the directory closed are listed in the alphabetical section. Generally speaking, the alphabetical section for San Francisco contains only San Francisco subscribers. There are other sections to that volume. The San Francisco Classified Section. Then the Oakland, Alameda and Berkeley sections, and other Cities and Towns section. There was an issue of the San Francisco Directory by the telephone company for May, 1935. The volume labeled "San Francisco and Bay Counties", filed on November 8, 1935, is the directory I had in mind.

(There was offered and received into evidence plaintiff's Exhibit 1, which consisted of a copy of the San Francisco Telephone Directory issued May, 1935.)

There was also a directory issued in May, 1935, for Oakland, Alameda and Berkeley and other Bay Counties. The directory to which I refer is the one filed on November 8, entitled "Oakland, Alameda,

(Testimony of Henry R. Woltman.)

Berkeley, San Leandro and Bay Counties, May, 1935”.

(There was offered and received into evidence plaintiff's Exhibit 2, which consisted of a copy of the Telephone Directory for Oakland, Alameda and Berkeley, and other Bay Counties, May, 1935.)

The telephones, the directory listings for the customers, our subscribers in Oakland, Alameda and Berkeley are contained in [56] the alphabetical section for the second directory, Plaintiff's Exhibit 2, Oakland, Alameda, Berkeley and San Leandro. This directory has other sections in addition to the alphabetical section, namely, Other Cities and Towns and a classified section for Oakland, Alameda and Berkeley. By "Other Cities and Towns", I mean the towns in San Mateo County and some in Marin County. The San Francisco alphabet is also contained in the Oakland volume.

Such a directory was issued for San Francisco in 1908, October, and they have been issued periodically since that time. They were always divided into these two volumes, the San Francisco volume and the Oakland, Alameda, Berkeley and San Leandro volume.

Phillips & Van Orden, of San Francisco, printed the May, 1935, directory under arrangement with the telephone company, and they were paid by the telephone company. The San Francisco directory is distributed in San Francisco, the city and county of San Francisco, to the subscribers for service. Assuming there are one hundred and sixty thou-

(Testimony of Henry R. Woltman.)

sand (160,000) listings in the alphabetical section of the San Francisco directory more than that number of directories might be distributed because we very often have customers who want more than one book and if they have service telephones they may want a book at the different telephones.

In May, 1935, or at the closing date, there were 243,100 telephones being served by the San Francisco Exchange in San Francisco. By "closing date" I mean the time when we closed the directory for further changes, that is on March 23, 1935. After that date we received no more listings for the next issue of the directory. That issue was May, 1935, and we received no more listings for publication.

The number of telephones in Oakland, Alameda, Berkeley and San Leandro was 120,784. The number of listings in the San [57] Francisco alphabetical section for May, 1935, was 160,266 and for the Oakland, Alameda and Berkeley alphabetical section 97,512. Every telephone is not necessarily listed in the telephone directory but there may be a telephone directory distributed for every telephone.

I have an exhibit here that shows how our detail is made up for the alphabetical section of the San Francisco directory. The application card that I referred to before contains the listing as it appears in the directory. From that application card our business office prepares and issues an order which covers the installation of the service it lists in the

(Testimony of Henry R. Woltman.)

directory, and there is a copy for the directory work, which contains the information. That is then inserted on our transcript. This is a copy of the manuscript. That is an order issued by the business office to the directory department from this application, the application of Mrs. Minnie E. Bailey. This is a part of our vital records.

Referring to the manuscript, immediately upon the issuance of a directory we then cut up columns and paste them on sheets of paper in this fashion, and that serves as our manuscript for the next book. The page I have in my hand is a manuscript for that particular directory, that is, the May, 1935, issue of the San Francisco alphabetical section. This is part of the letter B and the Minnie E. Bailey listing appears thereon. As changes occur, advice of which is received through the medium of these orders, proof is prepared, slips, and if it is new matter they are pasted down here, and the old listing is lined out.

The new listings are prepared in the form shown in the second column from the left-hand edge of the page. We paste the columns cut from our directory on the right-hand side of the page and new matter is entered in the next column over from that. The new matter is typed. This is done with every column in the alpha- [58] betical section of the San Francisco directory and we have a single sheet for every column. (There was offered and received into evidence plaintiff's Exhibit 3, consisting of a

manuscript of the alphabetical section of the May, 1935, San Francisco Telephone Directory.)

The manuscript is kept up daily and during the progress of the work copy is sent to the printer, from which he casts the linotype slugs that are used for the book. The printer, as he casts these slugs, returns the proof to us, which we verify and then at the end of the period, after the closing date that I mentioned, the whole manuscript is sent to the printer, and from that he completes the work of assembling all of the slugs in proper order, etc., and proceeds with the plates for printing the book.

(Following discussion it was stipulated on behalf of the defendants as to the process through which this particular telephone directory is prepared, compiled and published.)

The proof reading is done by both ourselves and by the printer. Following the proof reading and prior to the closing date we make changes and corrections in the original copy or manuscript. Taking this particular directory, the closing date was March 23rd and after that date we did not accept any new listings or "disconnects". The only corrections we would make after that would be errors in the listing, changes found in proof reading. There would be no additions or detractions from the number of alphabetical listings. The classified section is arranged by us and we keep a manuscript of this section very similar to that of the alphabetical section, except it is in the classified order. It has copies of all of the advertisements and those adver-

(Testimony of Henry R. Woltman.)

tisements are all arranged. Changes are made in them regularly as they occur, that is daily, if they would occur daily. We have a con- [59] tract for the distribution of the telephone directory. All told, about 100 people are employed regularly in the Directory Department. They don't all work all the time on this book, but about 100 in my department. Some of them work exclusively on the book. At this time, in what we call our compilation section, which is the manuscript, we had eight (8) people full time on the alphabetical directory and four (4) on the classified, and part time throughout the period there were eight (8) more on alphabetical and one (1) on classified. This number would increase after the closing date.

I have a tabulation of the cost to the telephone company of the compilation, issuance and printing and distribution of the San Francisco and Oakland directories for the May issue of 1935. The total figure for both sides of the Bay was \$295,222. Breaking that down, the total expense for Exhibit 1, the San Francisco directory, was \$203,572, which is the over-all cost of compiling, printing and distributing the directory to the subscribers. The Oakland cost was \$91,649 covering the same costs as enumerated for the San Francisco directory.

There were 109,407 changes in the San Francisco alphabetical section occurring in the May issue of the 1935 directory from the time it was issued until the next directory was issued this year. The num-

(Testimony of Henry R. Woltman.)

ber of changes is approximately thirty per cent (30%) of the number of listings, that is the number of new listings in the succeeding directory is about thirty per cent (30%) of what occurred before. For each of those 109,000 we went through the routine and procedure of editing described in connection with our manuscript sheet. There were 60,751 changes for the Oakland alphabetical section.

Since the October 1908 directory for San Francisco, directories have been issued periodically and they vary in the period for which they were issued from a minimum of four months to [60] a maximum of eight months. I have made a comparison of the May, 1935, directory listings with a 1909 directory. I think it was the October issue.

The listings in the May, 1935, directory were compared with the listings in the February, 1909 directory, by taking the first ten listings of each letter of the alphabet, and we found one listing the same in San Francisco and none in Oakland.

(There was offered and received in evidence plaintiff's Exhibit 4, consisting of a written memorandum showing the comparison of the 1935 and 1909 directories.)

There is one correction I would like to make. In the East Bay section we checked six listings under each letter of the alphabet, and in San Francisco ten under each letter of the alphabet. We found

(Testimony of Henry R. Woltman.)

no listing in the East Bay and one in San Francisco, for the W. O. Hardware Company.

I know of no alphabetical directory listing the telephone subscribers that is put out in San Francisco or Oakland, other than the ones put out by the telephone company. The telephone company receives a certain amount of revenue from the classified section of its directory. The approximate figure per issue for the two directories is \$427,484. I mean the Oakland and San Francisco issues. That figure is for the May, 1935 directory.

There are some introductory pages prepared by us which give information of value in regard to the operation of the telephones, the rate information, etc., long distance rate information, etc. This appears in the opening pages of our directory.

I have seen copies of the numerical telephone directory put out by the defendants in this case. I have seen both the San Francisco and Oakland issues.

(There was offered and received in evidence plaintiff's Exhibits 5 and 6, consisting, respectively, of copies of the San [61] Francisco numerical Telephone Directory for 1935-1936 and the numerical Telephone Directory, Oakland, Berkeley, Alameda, San Leandro, 1935.)

I have examined both of these numerical directories. It is my opinion that the issuance of the Numerical Directory is not good for our business.

(Testimony of Henry R. Woltman.)

The reason for that is this: There are several reasons. First of all, while we don't like to admit it, we do make some mistakes in the issuance of our own directories. When mistakes are copied in this directory then that directory, of course, has a great deal of obsolete material in it. It becomes obsolete rapidly, and that is out in the hands of the public. By obsolete I mean, as telephones are connected, of course, they do not appear in this directory, and as they are disconnected they still continue to appear. Of course, that is true of our own directory, too, but we offer our own information service, which takes care of that. There is another way in which it affects the telephone service. There are instances of where we may have to reassign telephone numbers due to lack of facilities, or for various reasons, and then that telephone would appear in—would be under somebody else's name than would appear in this directory. For example, John Doe has a certain telephone number, and it appears in our directory, and similarly appears in the numerical directory. Then, due to the exigencies of the service, sometimes during the life of the directory this particular telephone service for John Doe is disconnected, and we have to use that telephone number for another subscriber. Then the old name will appear in this directory, in the Numerical Directory, and anybody looking up that number in the Numerical Directory will find the name of somebody who is not now the subscriber to that telephone. If

(Testimony of Henry R. Woltman.)

they called that number they would get the new subscriber instead of the name as shown there. [62]

Cross Examination

There would be quite an interval of time elapsing before there is a reassignment of a cancelled number. I could not tell definitely the exact amount of time but it would be after sufficient time had elapsed and there would be few, if any, calls being placed for the old number. It might be before the telephone company had published a new directory but as a general rule it is not. We try not to reassign numbers during the life of the directory in which they appear. I could not say offhand what percentage of the yearly changes would comprise such reassignment of numbers. It would be a relatively small percentage. I should say probably less than one per cent. I do not think this is a small objection to a numerical telephone directory because there still would be a possibility of people getting the wrong name from it, and that may cause difficulties that would reflect on us. In that instance we would get two calls instead of one. As to the numerical telephone directory containing obsolete material the same is true of the telephone company's alphabetical directory. As to certain numbers and certain information contained therein it is obsolete the day it comes off the press. When a person is mis-guided by the use of the alphabetical telephone directory and calls a number given there

(Testimony of Henry R. Woltman.)

which is incorrect according to the change made subsequent to the publication of the directory, he gets our intercepting operator. This operator would advise the person making the call to call information, as the general thing, and that there has been a change. If the telephone had been disconnected she would say so. The same would be true of a number called from the numerical telephone directory and the call would go through the same mechanics. I understand that a numerical telephone directory is used very largely for check-up on names of somebody, some person who has called and left a number. [63]

Q. Does the telephone company supply the public with such a service?

A. We don't issue a directory on that basis.

Q. Do you provide the service?

A. It is possible to obtain it.

Q. Through what means?

A. On proper showing at the business office.

By "proper showing" I do not mean that we would require an affidavit. What I mean is this, that we have always looked upon the telephone numbers, the listings in our telephone directories, as being a part of the service we furnish to the subscriber, and while he is not given any proprietary interest in it, nevertheless as long as he is the subscriber and the listing is a very vital thing to him, we agree with him in the manner in which it shall appear in the telephone directory and consider it as a part of his service. So we feel that he is

(Testimony of Henry R. Woltman.)

entitled to have that listing continue in that manner, and not be tampered with and sent around in some other way and used for some purpose that he might not care for. In other words, he has never been consulted on this other matter at all. So then if a customer, another subscriber, has some particular reason for finding out a telephone number, the name attached to a certain telephone number, and comes to our business office and explains why he wants the information, and if it is for a reasonable purpose we will furnish it. As a general thing the telephone company determines the reasonableness of the purpose, except in connection with what we call our non-published listings. Those are listings that we do not publish in our directory, having been so requested by the subscriber that those numbers or names be not given out for any purpose. We furnish this numerical telephone service to the general public as I have described. There are no preferred customers to whom the service [64] is given. It is given to the Police Department, on a proper showing; a court order, of course, would get any information that we have to give. The Fire Department and others would be entitled to obtain such information upon a similar proper showing.

Our company is the author of the preliminary pages. Of course, this is a matter of continuous usage, etc. We have changes in the business that have to be taken care of. For example, the methods of dialing, when dial telephones were introduced. At the time that we introduced the dial service,

(Testimony of Henry R. Woltman.)

prior to that time, "How to use the telephone" had been confined to the use of manual telephones, etc. This is a matter that changes from time to time, and the information is prepared by certain people in the company. Not necessarily always the same, but it is officially gone over and edited and put in the book. I edit some of it, but not all of it. The matter would appear in the previous issue and would be used as the basis, and then any changes that were introduced, and it was cleared through the office of our Commercial Engineer, Mr. Chapman, who handles matters having to do with rates and rate practices. This all ties in to rates and rate practices. The same is true as to plaintiff's Exhibit 2, the Oakland directory. The introductory pages of the San Francisco and Oakland directories are not identical. The equivalent pages in the Oakland directory were prepared under Mr. Chapman's supervision.

The pages between the end of the San Francisco alphabetical section and the first page of the classified section are what we call filler. It comprises an institutional advertisement of the telephone company. There is also an institutional advertisement at the end of the classified section. There are seven pages, enough to make up a 32 or 54 page form in the printing operation. I am not the author of those advertisements. That is done through our information and publicity departments. I don't [65] know who the author was. There are similar pages at the

(Testimony of Henry R. Woltman.)

end of the Oakland, Berkeley and San Leandro section, to fill up the forms. Institutional advertising is also interposed between the sections of plaintiff's Exhibit 2. It is for the same purpose and the authorship is the same.

The sum of \$295,222 represents the cost of the directory; that is, plaintiff's Exhibit 1 and 2. This figure covers the preparation of the copy, the manuscript (service of employees of the telephone company under my supervision), then the printing, binding, and transportation, and paper. It also includes the money paid to our printers and to the paper house. Then, there is distribution; that is, the delivering of the directory to our subscribers, and soliciting advertising. Those are the principal expenses. The item of \$295,000 does not include cost items incurred in bringing about the receipts from the classified sections because we would issue a directory whether we had any classified section or not. The figure of \$295,000 includes the cost of soliciting advertising.

The telephone company actually makes a profit from the business of publishing a telephone directory. The profit would be the difference between the gross receipts for the classified or some other figure subtracted by \$295,000 gross. The deduction of the gross expense from the gross revenue would give the profit.

In addition to the figure \$427,000 gross there is one other item. That is a deduction in distribution,

(Testimony of Henry R. Woltman.)

because we have to account for the sale of the old directories we take up. Whenever we make a directory delivery we exert every effort to bring in the old books that are obsolete, so as to get them out of circulation.

Q. Is there any income from the telephone directory other than the yellow section, or classified section?

A. Oh, a small amount of sales of directories. People come in and want extra books. There is a small amount of that.

The charge for bold faced listing is in the advertising [66] revenue. None of that is done in the regular alphabetical section. Years ago it was done but it has been discontinued for some time. We have no advertising in the alphabetical sections.

The 1909 telephone directory mentioned on direct examination was copyrighted. I was not connected with the telephone company in the years 1908 or 1909. We have a certificate of copyright for the 1908 directory.

The telephone company made a profit in the business of publishing and distributing the May, 1935, issue of the telephone directory. The same has been true of other years. I am not prepared to say every year, but other years, yes. I have not been in directory work all of that time. I have been in directory work off and on since 1918, but not entirely with the Pacific Company. I was with another telephone company during a part of that time. As a general rule I would say that a profit is made.

(Testimony of Henry R. Woltman.)

The telephone company has just published a new directory. I cannot say absolutely whether the publication of that particular directory has been hurt in any way, or was hurt in any way by the defendants' publication of its Numerical Directories, for this reason, that when complaints are received of difficulties in placing numbers and getting calls, etc., it is our practice to straighten out the difficulty, give the customer the information, whatever the nature of the case may be, as rapidly as we can, and without questioning him. So in our complaint records the source of a complaint would not show. That is to say, whether it was a mistake in the numerical directory, or whatever it might be.

I cannot say absolutely that there has been any damage or not, of my own knowledge, but, of course, from general knowledge of the condition I would say there have been difficulties. It is not a fact that the principal objection the telephone company has to the numerical directory is the loss of revenue from return [67] calls not being made after the identity of the caller is ascertained by use of the numerical directory. There might be a loss of revenue, but I am not concerned with that. The company is not concerned with that. The principal objections that we have are the objections that I stated earlier, that these directories, these numerical directories are issued—they are sold, and they are in circulation for a greater or shorter length of time, depending on how long the people use them, and they are not required—they are just

(Testimony of Henry R. Woltman.)

there, and we find that difficulties occur in our service as obsolete books are left in circulation, and that is the reason why we exert every effort to bring back and retrieve all of our phone books that have been previously distributed. That is our continuous experience. There is no positive indication that that is going to be the case here except the new numerical directories have not yet been issued. The book, the Numerical Directory, is sold, as I understand it, and becomes the property of the purchaser, and so if the purchaser wishes to retain it he can. The telephone directory that we issue is the property of the company, and one of our conditions of service is that it is taken out of service upon the distribution of a new one. In that way we get all the old ones out of service, and get the obsolete information out of the hands of the public.

Supposing the same practice were followed here, the objection would stand, because of the fact other books are copied from ours, and, therefore, they are later than ours, and use all of the obsolete matter, and any errors, etc. that we may make, that is all perpetuated.

Redirect Examination

Q. In other words, Mr. Woltman, in addition to what you have stated, you object to their copying from your directory?

A. That is right.

Q. Now, one other point that I want to make clear. That [68] is the giving of information by the

(Testimony of Henry R. Woltman.)

name and address of the subscriber when merely the telephone number is known. Some question was asked you by Mr. Naylor if there were preferred subscribers, he mentioned the Police Department and Fire Department. Will the name and address of a subscriber be given to a member of the general public who would appear at the business office and make a proper request?

A. Yes.

Q. That is, without regard to the class?

A. Yes.

Q. Or their position?

A. Yes.

Q. Whether it is private or official?

A. That has nothing to do with it.

Recross Examination

Q. Who determines the propriety of a request?

A. The people in the business office, the manager.

Q. The manager of the business office?

A. Yes.

Q. In other words, he is the sole arbiter of that, of the propriety of a particular request?

A. Well, we have general regulations from experience, etc. that we have worked out. I will give you an example, if you like. If a customer comes to us and finds himself charged on his telephone bill for a certain long distance call, and it is charged only by number, and he would like to find out who it was who placed that call, so that he can be sure

(Testimony of Henry R. Woltman.)

that the call was correct, etc., we would find out for him that name.

Q. I am speaking, though, of a direct inquiry from a member of the general public, who would present himself to the officers of the telephone company and ask the simple question, "Who [69] is the subscriber to this particular telephone number?"

A. Well, we would ask why he wanted to know.

Q. In other words, a showing must be made?

A. Yes, for the reason I explained, that we feel that the listing is part of the customer's service, and we agreed with him as to how it shall appear, and so we don't give out information just to anybody's off-hand request, because it might be to the customer's disadvantage.

Q. By company rules, must the manager of that particular division be seen before a ruling can be had?

A. Well, I did not mean a company rule in that connection. We don't have hard and fast rules on these things. We attempt to deal in a reasonable manner with a reasonable request. Our managers in our different offices are highly trained men.

Q. The Pacific Telephone & Telegraph Company is the only telephone company furnishing service in this particular metropolitan area, is that correct?

A. That is correct.

Mr. KORTE: Q. That disclosure, Mr. Woltman, just to make it clear, would not be made in the case of the unpublished number that you mentioned?

A. No.

HOWARD L. VAN ORDEN,

a witness called on behalf of plaintiff testified substantially as follows:

Direct Examination

I am in the printing business, located at 234 First Street, San Francisco. My concern printed the telephone directory for May, 1935, for San Francisco and also the Oakland, Alameda, Berkeley and San Leandro directory. I recognize plaintiff's [70] Exhibits 1 and 2 as the directories printed by my concern.

(Following discussion it was stipulated by counsel for the defendants that the directory was entirely printed, and the type set and the plates in each of those directories made and the printing done entirely within the United States as called for by the statute.)

The statement "Copyright 1935 by The Pacific Telephone and Telegraph Company" was printed on every copy of the directory, of the May, 1935, book, and the plate from which the page was printed contained that notation. This is true of both the San Francisco and Oakland directories.

(Following discussion it was stipulated by counsel for the defendants that no question is raised as to the validity of plaintiff's copyright with respect to the work of setting the type and making the plates and printing the directory and binding it, as required by the statute, within the confines of the United States, nor as of those formalities or mechanics through which you would

(Testimony of Howard L. Van Orden.)

have to go in order to develop and distribute, reserving a question as to the copy right-ability of the directory as a whole.)

(There was offered, received and deemed read into evidence plaintiff's Exhibits 7 and 8, consisting, respectively, of 58 certificates of copyrights each for the San Francisco and Oakland telephone directories issued by plaintiff beginning with October, 1908 and ending with the May, 1935 issue. By stipulation photostats were substituted for the originals.)

(Following discussion it was stipulated by counsel for the defendants that the plaintiff had published telephone directories prior to the effective date of the Public Utilities Act and one at least as early as the year 1880.)

(There was offered and received into evidence, under stipulation by the defendants, plaintiff's Exhibit 9, consisting of a photostatic copy of an application for telephone service.) [71]

PERCY R. CLEMENTS,

called on behalf of plaintiff testified substantially as follows:

Direct Examination

I am manuscript supervisor for The Pacific Telephone and Telegraph Company, in Mr. Woltman's office. I have been doing that work for approximately twelve years. I am familiar with the nu-

(Testimony of Percy R. Clements.)

merical directory for the San Francisco Exchange and the Oakland Exchange put out by the defendants. I am also familiar with the telephone company's directory for the San Francisco Exchange and the Oakland Exchange. I have examined the telephone company's directories for May, 1935 in both those exchanges for errors. I have prepared a list of these errors and compared them with the numerical directory. The errors appearing in the numerical directory are identically the same as appear in the Pacific Telephone & Telegraph Company's directory. The list I prepared contains all the known errors in the telephone directory. I am showing you a list for the East Bay, Oakland directory, marked Exhibit A. The first of the three marked off columns consist in the alphabetical errors in our directory, the Bay Counties Directory. "P. 21." after each name in parentheses, refer to the page number in our directory. The first page is 21 and the last listing "White; Cyrus E." is page 238. The second column contains the East Bay alphabetical errors in the numerical telephone directory. The third column indicates what the error consists of. For example, "Benjamin, J.K." should not have appeared in our directory. It did appear, and also in the numerical directory. It was an error on our part. A human failure is about the only way I can answer that. We had no telephone service for that listing.

(Testimony of Percy R. Clements.)

(There was offered and received in evidence plaintiff's Exhibit 10, consisting of a list of errors in the plaintiff's Oakland directory.) [72]

We have 33 errors listed in the East Bay. I have prepared a like list for San Francisco, marked Exhibit B. The same procedure was followed, listing the errors in the directory in the first column and the manner in which it is listed in the numerical directory in the second column, and in the third column as it should be or should not be. There are 43 errors in the list. That is the total amount of errors known to our department.

(There was offered and received into evidence plaintiff's Exhibit 11, consisting of a list of errors in plaintiff's San Francisco Directory.)

I have compared the San Francisco directory for "disconnects" made between the time the directory listings closed on March 25, 1935 and the time the directory was issued. I have listed those "disconnects". There are 97. This is not all of the "disconnects", this being a spot check. I have examined the numerical directory for those disconnects. This list of disconnects appears in the telephone directory and they also appear in the numerical directory. This list is in three columns; the first column contains the telephone prefix and number, the second column the name, and the third column the date that the telephone service was disconnected. I have personally compared this list against the numerical directory. I found that these names appeared in

(Testimony of Percy R. Clements.)

the numerical directory. When the service is disconnected we ordinarily remove the listing. As many listings and disconnects come in after the directory was closed that would be taken care of in the subsequent directory. The 97 telephone numbers and names listed in this sheet are telephone numbers and names of subscribers to the telephone service who were disconnected in San Francisco between March 25 and April 30, 1935, and there was no telephone service at those names or numbers. I have done the same thing for the Oakland directory. I checked 50. I checked those 50 listings [73] against the numerical directory and found them in there. They were also found in the alphabetical section of the Oakland directory, put out by the telephone company and they are listed in three columns as in the case of San Francisco.

(Following discussion it was stipulated by counsel for the defendants that the defendants used the numbers and names which appear in the A to Z sections of plaintiff's directories, (not including classified) in the compilation of defendant's numerical telephone directories and that no other source was used.)

(There was offered and received into evidence plaintiff's Exhibit 12, consisting of an alphabetical list of errors and omissions of the May, 1935 directories, plaintiff's exhibits 1 and 2. On behalf of the defendants an objection was offered in so far as the list contained new numbers and sustained as immaterial. Following discussion it was stipu-

(Testimony of Albert C. Calendar.)

lated that the "disconnects" be understood as read in evidence.)

(Following discussion it was stipulated by counsel for the defendants that none of the unpublished numbers are listed in the Numerical Directories.)

ALBERT C. CALENDAR

A witness called by the plaintiff testified substantially as follows:

Direct Examination

(Following discussion it was stipulated by counsel for the defendants that the witness had three conversations with the Defendant Fred S. Leon, who admitted that the sole source the information for defendants' Numerical Directories (Plaintiff's Exhibits 5 and 6) was plaintiff's telephone directories (Plaintiff's Exhibits 1 and 2.)

I am district manager of the Commercial department [74] of The Pacific Telephone and Telegraph Company. My office is at 444 Bush. That is known as the business office. I am familiar with the practice of the telephone company in giving out the name and address of a subscriber when merely the number is furnished. If a subscriber should call on the information service, that is, the operators, they give them the telephone number of information. The operators, not having the name and address, or that particular part of the organiza-

(Testimony of Albert C. Calendar.)

tion, they so inform the customer that "I am sorry, we haven't that information." If a customer of ours would call the business office and say, "I have the telephone number and I would like to have the name and address", it would be given to him without restriction, except if the number was non-published. The reason for keeping different records for the business office and the information bureau is because our accounts are kept by telephone number, and services are referred to from the standpoint of the issuance of orders by telephone number. In the information bureau the records are kept alphabetically, and also by street address, but not by telephone number.

Cross-Examination

Mr. SHAPRO: Q. Do I understand you to say that if I have any phone number other than one that is listed on your records, and I call the business office of the telephone company right now and say, "I have the number Douglas 0666, and I would like the name and address of that party." Would that information be given me without any further ado, or any more questions than that?

A. That is right.

Q. That is correct? Has that been in force at all times?

A. Well, it has been in force, I guess, for about four years, and it was put in force on the theory that if somebody wanted to get that information and took the time to go through the whole book he could get it. [75]

(Testimony of Albert C. Calendar.)

A. Now, Mr. Calendar, if as the fact is, the previous witness this morning directly testified that in order to procure the information that I just described relative to the name and address of a subscriber with a particular listing in the telephone book, and could give no reason which was satisfactory to the Telephone Company, that the information would not be given, he was in error?

A. He was.

Q. He was in error. Is there any particular department, Mr. Calendar, in the business office, or any particular individual or individuals to whom such requests for information would be directed?

A. No. As the calls come in, you call Garfield 9000, that is our main switchboard, and ask for our business office. The operator would ask you on our Garfield 9000 board, we call it the private branch exchange attendant, "What is your telephone number?" In that way she could transfer the call to the party who would handle that particular part of the service.

Q. The identity of that exchange would be the identity of the exchange regarding which information was sought by the caller?

A. Right. The party that would respond to the call would be immediately the party that would have those services, or have the records appertaining to the service of the particular customer making the inquiry, and he would say, "I have a certain telephone number, and I would like to have the

(Testimony of Albert C. Calendar.)

name and address", and would be given that without any restriction.

The COURT: Would that apply to either the San Francisco or Oakland offices?

A. The same thing would apply in Oakland, too. Not for a San Francisco number, though. If you called Oakland they would [76] refer you to San Francisco, because the records are in San Francisco. If you wanted an Oakland number, if you called the Oakland business office for an Oakland number, you would get what we call "service representatives". That is their official title.

The COURT: Q. You could get the same service in Oakland as you could get in San Francisco.

A. Yes.

Mr. SHAPRO: Q. Now, Mr. Calendar, what sort of identification does the party, the caller, have to give of himself in order to procure that information, if any?

A. Well, no. The representative might ask him, "What is your telephone number?—because we keep a record of all contracts that we have in the business office.

The COURT: Suppose he said, "I have no telephone"?

A. We would give it to him anyhow. There is no restriction, your Honor.

Mr. SHAPRO: No restriction at all, and no questions asked or reasons asked before the information is given?

(Testimony of Albert C. Calendar.)

A. If the employee is carrying out instructions there wouldn't be.

Q. Well, we assume your employees do.

A. Yes.

Q. That has been your practice for the past four years, has it?

A. I would say about four or five years.

Q. Do you know if any information or publicity has been given by the telephone company to its subscribers of the availability of such information?

A. There has been no publicity given to that.

Mr. SHAPRO: None at all. That is all. [77]

Redirect Examination

By Mr. KORTE:

Mr. KORTE: Q. Mr. Calendar, is it a practice the telephone company desires?

A. We feel that if somebody wants that information, why, they are entitled to it, and we are under no obligation to withhold that information.

Q. Well, do you encourage the practice of making such inquiries?

A. No. It is there if they want it, and they ask for it.

I had conversations with Mr. Leon concerning the issuance of his directory prior to the time the San Francisco Numerical Directory was issued by him. I believe three times. The first one took place

(Testimony of Albert C. Calendar.)

at his residence on about the 3500 block, California Street. Mrs. Leon, Mr. Leon and I were present.

(Following discussion it was stipulated by counsel for the defendants that prior to issuance of the numerical directories defendants were advised by the plaintiff that it stood on its copyrights and did not want them to issue the said numerical directories because of the copyrights.)

I consider that the defendants are injuring the telephone directory in this way. In the compilation of a telephone directory it is a painstaking work to prevent inaccuracies, and we have facilities set up for many years, experience, etc., and every precaution that is absolutely humanly possible is taken to prevent inaccuracies, and it was my opinion that the defendant was not in the same position to publish a book, a directory, that would be free of inaccuracies as our book would be. That was one of the reasons. That injures our company in this manner, that wrong numbers on calls—I would have to go a little further and qualify my remark by saying [78] that in the use of this numerical directory for verification purposes, as I understand the book is intended for use, the customer might transcribe in a particular way those numbers onto a card, or something of that kind, and might refer to them later on in placing calls, and if he transcribed a call inaccurately, that transcribed number would contain inaccuracies, or if the number had been changed through the normal turnover in every business, as was brought up this morning, he would

(Testimony of Albert C. Calendar.)

have a wrong transcribed number, and if he was to place a call for that particular number it would cause annoyance to the customers, our customers as well as to the company by virtue of the fact that that call had to be directed to the intercepting operator, and we would have to give that information as to what the right number was. We are willing to do that.

Then there is the customer objection. That is, there is a subscriber's objection to calling a wrong number, to *be being* called by somebody when they might call the number, dial that number, they might use it after that number had been reassigned to some other customer.

The customer would be getting these calls, and would call us and say he was being called, he was connected by mistake with our equipment. In fact, he would question the party that would be calling and say, "What number did you call?" And he would say, "I called a certain number." Now, that would be the complaining customer's number, and he would say, "Well, this is my number." "Well, I dialed that number, and I understood that number belonged to somebody else", and the party would then call the telephone company who received the call and he would make complaint that this party dialed the number by mistake, if he was dialing, that the party was dialing that number after it has been reassigned, and it had been dialed by mistake. [79]

(Testimony of Albert C. Calendar.)

The subscriber would be injured. The company would be indirectly injured because we are more or less held responsible, because the customer would not be able to differentiate whose fault it was that he was receiving these wrong numbers.

Numerical directories are not new, although to my knowledge the only numerical directory I know of in San Francisco was one that was put out by a party, I think, by the name of Coleman, many years ago. It was a convenience in so far as it contained accurate information, your Honor. We had quite a lot of trouble with that, because customers would use that directory and make notes, and some of the billheads, I might illustrate the difficulty we encountered—if a customer will put his telephone number on a billhead or a business card, and they get into circulation, and later on that customer's number is changed, and the original number may have been reassigned, the party who received the number, the second party who received the number, would still be getting calls for the party who originally had the number. He wouldn't know but that the telephone equipment was faulty in making the connection and giving him wrong connections, and he would call us and want to know why he was getting these calls by mistake.

The numerical directory is a convenience if it contains accurate information. As a matter of fact, we say it is a convenience, because we give out the information, ourselves. Our main objection to it is because of the inconvenience it may cause the

(Testimony of Albert C. Calendar.)

subscribers by reason of wrong numbers being dialed. And at the same time it is an expense to the telephone company, as well, as it causes us annoyance in receiving complaints from a lot of customers who receive those wrong numbers, because they hold us responsible for faulty action of equipment. They don't hold us responsible for incorrect dialing, but a great many customers won't quizz the party as to what number he called. For instance, if the number was [80] dialed for Brown, and if the Jones number—a party would be calling on the 'phone and want to talk to Mr. Brown. They would say, "This is not Mr. Brown, who do you want". The other party would say "I want Mr. Brown." "Mr. Brown is not here, this is Mr. Jones", and the party would hang up, and he wouldn't have the opportunity to find out what number he did dial. They would call on us and think they got that wrong number.

We do have complaint, though, because people being called on a wrong number, they don't know that the party had dialed their number. As a matter of fact, if they were to question the party that was dialing, the calling party realizing he had made a mistake in calling the number, he would hang up before the party would get an opportunity to determine from him whether he dialed his number. That would cause the party that was called to assume in many cases that the telephone company's equipment was functioning in a faulty manner, and

(Testimony of Albert C. Calendar.)

he would call and complain to us, and I have gone to this extreme of asking these customers to keep a record of those numbers that were being dialed and getting the numbers, getting in touch with other parties, and determine from them just what it was they were dialing, what number was dialed by mistake, and I found in many cases it was due to the fact they got the number off a card, or a billhead, after the number had been reassigned to another customer. We would not be worried about any calls of that kind that would come in, about someone dialing the wrong number.

The annoyance that I have described to the Court, that would result from a number having been changed and relisted under another name, would result anyway from the fact the numerical directory would still retain under that number the same number belonging to the real subscriber provided they did not get out another book. If I may qualify that again. Inasmuch as the directory is sold, as they brought out this morning, it is not [81] obligatory upon the party who bought it to turn it back. That would be a permanent circulation. Assuming the numerical telephone directory was compiled from information derived solely from the May, 1935 book, the very same errors which would cause the annoyance I have described to the Court would appear in our own telephone book. In other words, until a new book was issued the May, 1935 book would be the only official book as far as

(Testimony of Albert C. Calendar.)

we are concerned. If Jane Smith had Douglas 1234 as her number at the time the May, 1935 book was issued, as far as anybody using our book was concerned they would know Jane Smith had Douglas 1234. If they did not use the numerical telephone book but on the other hand called the number, itself, from any other source, such as I have described, the letterhead, or billhead, they would receive the information I have just described from the intercepting operator, the very same as would a person who called that number, having used the numerical telephone directory to get it. During the life of a particular directory the annoyance to the subscriber, or the telephone company through its subscribers, by reason of the customer using a disconnect, or change or error, as far as the company itself is concerned, would require the same service of an intercepting operator. I pointed out to Mr. Leon that he was not in a position to bring about the efficient compilation as we are, by virtue of our past experience in the business. I told him that his inaccuracies in my opinion, would be greater than ours because of the precautions we set up to prevent inaccuracies. I do not know what the facts are with respect to the comparison of our book and the numerical telephone directory for the number of inaccuracies.

Calls to numbers appearing in our directory or in the defendant's directory, since reassigned, would go over to the intercepting operator in both instances, and then the intercepting operator would

(Testimony of Albert C. Calendar.)

give out the information, but that is an expensive [82] method of operation from our standpoint. If we can confine the intercepting service to a minimum number of calls it would save us quite a bit in expense. It is quite an expensive service.

Supposing the number Garfield 6133 to have been originally assigned to John Doe and then during the life of the directory, and after the numerical directory had copied that number, that number was assigned to Richard Roe and Richard Roe was called by someone at the number Garfield 6133, the numerical directory would give no information about that number. They would still give the information as to John Doe having that number. It would give the same information that our directory would give during the life of our directory, but the subsequent directory would be corrected. In the re-assignment or disconnecting of numbers, we don't re-assign them until about the end of the life of the existing directory, and only do we do that where there is a scarcity of facilities.

(Following discussion it was admitted by counsel for the plaintiff that in so far as it is accurate and kept up to date, a numerical telephone directory is a useful publication.)

(There was offered and received in evidence plaintiff's Exhibit 13, consisting of a certified copy of the rules and regulations on file with the Railroad Commission.)

There was an offer on behalf of the plaintiff to call George C. Martin to testify substantially as follows:

He is employed by the telephone company as a salesman at Sacramento. On November 27, 1935, he was employed in San Francisco. On that date, which was two days after the issuance of the preliminary injunction here, he called at the office of Mr. Leon in the Monadnock Building, about 2:45 P. M. to buy one of the directories. Mrs. Leon waited on him and attempted to sell him both the San Francisco and Oakland editions. When he concluded to [83] buy only the San Francisco book he asked for a receipt, and when he asked for that Mr. Leon called from the adjoining office and told him to date the receipt Monday, the 25th. When he objected to the date not being the actual date of the sale, it was explained to him that they were having trouble with the telephone company not wanting them to put out the numerical directory, and for their own reasons would rather have the date as made out on the receipted bill.

On behalf of the defendants objection as to this offer was made on the grounds it was incompetent, irrelevant and immaterial, and not embraced within the issues of the case, and has no bearing on the case by reason of the fact that if the evidence as offered is true it was not a violation of any order of this court, because it had not as yet been served.

The court's ruling was as follows: Objection sustained, with an exception allowed to the plaintiff as requested.

(There was offered in evidence on behalf of the plaintiff a bill of sale, dated Nov. 25, 1935, signed by D. Leon. The defendants offered the same objection as to the offered testimony of George C. Martin. The court's ruling was as follows: Objection sustained, with an exception allowed to plaintiff as requested. It was further ordered that the bill of sale be marked "Plaintiff's Exhibit 14 for identification".)

It was stipulated by counsel for the defendants that were Silvia Decter, a former employee of the defendant, Fred S. Leon, in the work of compiling his directory, called to the stand her testimony would be substantially as follows:

That the manner of compiling the numerical directory was to take out of the May issue the alphabetical section, out of the May issue of the telephone company's telephone directory, cut the columns, and then cut the listings out and paste them on loose leaf [84] binder sheets in numerical order; that the listings in the telephone directory were pasted in numerical order on those binder sheets, according to the exchange classification. They would take one sheet of the telephone directory and they would rule out the numbers and listings on the back side of that sheet with a pencil, and then clip out the listing, and they would place the listings in boxes according to the exchange telephone number of that particular listing. For example, my telephone number would be "Norbert Korte, Garfield 6133." That would be cut out, just that listing, and put in a box labeled "Garfield."

Then when all the Garfield numbers were in that box they would take them out of the box and paste them on this loose leaf binder sheet in numerical order, so that my listing would come, "Norbert Korte, Garfield"—immediately after 6132 and immediately before 6134, if there was such a listing for somebody else. After those looseleaf binder sheets were made up in that numerical order for all the alphabetical sections of the San Francisco directory and the Oakland directory, then they would type lists of those listings, but in making or doing the typing they would reverse the order of the listing, and leave out the address, so that my number would appear on their typed list as "Garfield 6133, Norbert Korte", no address. Those sheets were typed up in columns, three columns of 133 listings to the column so that there were 999 listings on each sheet. They were sent to the printer and photographed and then reduced, and there plates were made.

It was further stipulated by counsel for the defendants that the little clippings pasted on the sample sheet were cut out of the telephone alphabetical section; that this was done for every listing in the telephone book from the Numerical Directory; that when they proof read the typed sheets from which those plates were made on each typed sheet the listing was reversed so that the telephone number came first and the name second; that they proof read [85] them against these pasted sheets, to see that they were correct; and made corrections against these pasted sheets; that they made no corrections other than those shown on these pasted

sheets; that the sole means of proof reading and correcting the type written sheets from which the plates were made was the original source of the information, namely, the plaintiff's telephone book; that they did not verify any of the listing by approaching the subscribers with the pasted sheets. That Miss Decter was proofreader.

(There was offered and received into evidence plaintiff's Exhibit 15, consisting of a sample of one of the sheets referred to in the stipulated testimony of the witness Silvia Decter.)

It was stipulated by counsel for the defendants that if Miss Wnola Mosier were called as a witness on behalf of the plaintiff she would testify substantially as follows:

That she was employed by the defendant, Fred S. Leon, in the compilation of the Numerical Directory; that she typed rather than proof read; that she was one of the persons who typed up the numerical sheets from the pasted sheets.

Motion was made for dismissal of the complaint as to the party Dagmar Leon, joined here as a partner of Fred S. Leon, doing business as Numerical Directory Co., and who filed an answer denying such partnership, on the theory that the plaintiff had not offered any evidence, whatsoever, in support of that particular allegation.

Whereupon counsel for plaintiff requested permission of the court to reopen plaintiff's case to offer the evidence. The court's ruling was as follows: That the case be reopened.

There was offered and received into evidence plaintiff's Exhibit 16, consisting of a letter addressed to Mr. A. C. Calender, Dist. Mgr., Tel. & Tel. Co., San Francisco, California, signed by Dagmar Leon. On behalf of the defendant, Fred S. Leon, an [86] objection was made to the introduction of the letter on the ground that no foundation had been laid. The objection was overruled by the court.

(Following discussion it was stipulated by counsel for defendants that the witness Silvia Decter and Wynola Mosier would also testify that Mrs. Leon worked on the compilation of the directory.)

Whereupon the motion for dismissal of the complaint as to the defendant Dagmar Leon was renewed. The court's ruling was as follows: Motion denied, with an exception allowed as requested.

FRED S. LEON

One of the defendants, called as a witness in behalf of the defendants, testified substantially as follows:

My business is the publication of the Numerical Telephone Directory. It is owned by me. To my knowledge I have no partners in that business. My wife has cooperated with the production of the book, and that is her relation to me. She is my wife. That is my name on the first page of plaintiff's Exhibit 6. The purpose of inserting it there was to

(Testimony of Fred S. Leon.)

show the ownership of that business, the responsibility for the compiling. The name appeared in precisely that manner in all of the Numerical Telephone Directories issued for Oakland. In the Numerical Telephone Directory for San Francisco the name is on the reverse side of the first page under the copyright notice.

Cross-Examination

I did not mean that my name appears with the Numerical Telephone Directory itself but it appears down in the copyright notice. That is the only place in which it appears. The copyright notice placed on the reverse side of the first page was in all the San Francisco directories. I also printed an excerpt from the copy- [87] right law. Mrs. Leon worked right along with me in compiling this directory. She did not work right along with me in selling it. She worked in my office in the Monadnock Building where it was sold. She did not make sales unless somebody would drop in and buy a book over the counter which was not the usual procedure. She did sell some over the counter. More than one. In compiling my directory I did not consult any individual subscriber, telephone subscriber listed to get his permission. There are possibly certain errors that appear in both of my numerical directories. We have no facilities of our own by which we could give the purchaser of either of our books the correct information where the listings are erroneous.

(Testimony of Fred S. Leon.)

Redirect Examination

I have recorded a certificate of doing business under a fictitious name in support of my claim to the proprietorship as an individual of the business conducted under the name and style of Numerical Directory. It is recorded in the City and County of San Francisco.

WILLIAM E. CHURCH

A witness, called on behalf of the defendants, testified substantially as follows:

I have charge of telephone facilities for the Shell Oil Company in Los Angeles and points along the Pacific Coast, where we have our own facilities. I have held that position for twelve years I believe, approximately twelve years. I have charge of our privately owned telephone system, and also check all telephone bills, long distance and exchange bills on matters pertaining to telephone expense. My duties also include supervision of the mechanical facilities that are provided as a service to my employer. I have seen two or three numerical directories; four or five, I suppose. I have seen the Oakland Directory and the San Francisco Directory, [88] the Santa Barbara Directory and one at Phoenix, Arizona, and I believe one at San Jose. I have seen a copy of plaintiff's Exhibit 6. In my opinion as a telephone man the directory I hold in my hand has a very useful purpose. The outstanding purpose that I see for this is that most any busi-

(Testimony of William E. Church.)

ness office, in my experience, gets quite a number of calls when you are out of your office, to be called back. They ask you to call a certain telephone number and quite often I have found as many as five or six such calls on my desk after being out for an hour or so, and with this directory I could check those calls and see whether it was some salesman or someone seeking employment, and ascertain approximately what their business was and whether it was necessary to make the return call.

In Los Angeles we have measured service, and each call costs us $3\frac{1}{2}$ cents. Naturally, if we make those eight or ten calls it would be over twenty or thirty cents, and in a large organization that might be quite an item, as well as indirect reasons why you might not wish to contact a certain party at a given time when you wish to assimilate some information that you should know in advance, and that would be discussed during that conversation. I should say the checking use of the numerical telephone directory would be its prime use. I can hardly see how you could turn to this directory to place a telephone call. Obviously, you would have quite a time if you wanted to look up John Doe, looking through all the book to find that John Doe's number was in this directory. It would be a parallel case to taking the ordinary telephone directory and trying to find out who a certain number belonged to. No, I don't think the numerical telephone directory would be put to the same use or duplicate in any sense the utility of the alphabetical tele-

(Testimony of William E. Church.)

phone directory. It is the practice in the Shell Oil Company when a call is received [89] at our main switch board and the person called is not at his particular desk or location, if the party has a secretary, the secretary takes the call in the usual way, and our operators have to ring him two or three times, and probably get on the line and say the party is out, and ask if there is any message to be left, or to have him call back. A memorandum is thereafter conveyed from the operator to the location or desk of the party for whom the call was intended. The party leaves a number to be called back, and naturally they transfer that information to the party who was desired. It seems obvious to me, that a Numerical Telephone Directory would have utility for the purpose of checking back on such calls, if it was put to that use.

Cross-Examination

The telephone system of the Shell Oil Company is a private system. We do not publish a directory to the public for that. The public has not access to it. I check, as well as supervise, our own facilities. I check the long distance calls, exchange calls, and other telephone expense which is paid to the telephone company in our entire southern division. That is as a subscriber to the telephone service. Any subscriber could do that. My testimony is that the Numerical Directory is of an assistance there in placing these calls for which numbers have been

(Testimony of William E. Church.)

left at our office. We could place the call without the Numerical Telephone Directory. It is of no assistance to us in completing that operation.

MRS. DAGMAR LEON

One of the defendants, called in behalf of defendants, testified substantially as follows:

I am the wife of the other defendant in this action, Fred S. Leon. I had no connection whatsoever with the Oakland Directory until we started with the compiling. I helped compile it [90] but I had nothing to do with any other part except the compiling. It is true I helped in the office in the Monadnock Building for some days, but not all the time. I had nothing to do with the selling of the Oakland book. I had nothing to do with the management of the business nor the giving of any directions respecting the manner in which the business of the Numerical Telephone Directory, either in Oakland or San Francisco, was conducted. It was definitely understood I was to have nothing to do except with the compiling. I had such an understanding with my husband. To my knowledge, no one other than my husband, Fred Leon, had any direction or control over the affairs of the business of the numerical directory either in San Francisco or Oakland.

Cross-Examination

By "compiling" I mean preparing the book for print. I had something to do with the Oakland and

(Testimony of Mrs. Dagmar Leon.)

San Francisco directories in that connection. Yes, I made some sales, but I had nothing to do with the sales department at all. Yes, I made some sales, when they just happened to come into the office, I sold the books. Those sales I did make were outright. That is the way all of the books were disposed of, for a stipulated price.

PERCY C. CLEMENTS,

recalled in rebuttal on behalf of plaintiff, testified substantially as follows:

I made a spot check of certain listings in the numerical directory for San Francisco against the Alpha section of the telephone directory of May, 1935, for San Francisco. I don't recall off-hand how many listings I did check. I think I have the figure down there. I prepared a list. Some I checked and some were checked under my supervision. This is the list that I prepared. The statement on the first page of that list, "Comparison of 1000 listings taken from the San Francisco Alpha Section March [91] 1935 Bay Counties Directory with 1935-6 San Francisco Numerical Telephone Directory" is incorrect it should be May, 1935 directory. Refreshing my recollection from that list, I checked 1000 listings in the numerical directory against the Alpha section of the San Francisco Telephone Directory of May, 1935. I

(Testimony of Percy C. Clements.)

found errors to the extent of approximately 14%. In other words, about 140. The errors consisted of some omissions, some incorrect spelling, and where there was a little difference in the name. In every case I have indicated the error in the margin of those checks.

(There was offered and received into evidence plaintiff's Exhibit 17, consisting of a list of errors found in a comparison of 1000 listings taken from the San Francisco telephone directory for May, 1935 with the defendants' numerical directory for 1935-6.)

Cross-Examination

The list which has just been introduced in evidence as plaintiff's Exhibit 17 was not the only check that we made of the San Francisco Numerical Directory with our own Alphabetical directory. We made other checks besides that. I could not personally state the percentage of errors found in the other checks, because in our previous Exhibit we had the same errors in our directory as you have in the numerical directory. Plaintiff's Exhibit 17 represents the only errors that occur in the numerical directory as compared with our own Alphabetical directory. I did not make any other or more extensive similar check. I did not check any other letter of the alphabet. We took those 1000 listings from various parts of our book. They were not all under A. Explaining just how we made this check, I took one of the Telephone Company's May, 1935 San Francisco Alpha Directories and I took the

(Testimony of Percy C. Clements.)

outside column just discriminately, pasted them up, and then started the check against your Numerical Directory and our directory. I made the one check, and the result of that check, and the percentage of [92] 14 per cent of errors, is contained in plaintiff's Exhibit 17.

Respectfully submitted:

JAMES M. NAYLOR and
ARTHUR B. SHAPRO

Attorneys for Defendants and
Appellants.

Receipt of copy of the foregoing Defendants' Proposed Statement of Evidence is hereby acknowledged this 25 day of September, 1936.

PILLSBURY, MADISON &
SUTRO

Attorneys for Plaintiff and
Appellee. [93]

It is stipulated and agreed by and between counsel for the above-entitled parties that the foregoing narrative statement of evidence is a full, true and correct statement in narrative and verbatim form of all the testimony produced upon the trial of the above-entitled cause.

JAS. M. NAYLOR
ARTHUR B. SHAPRO

Attorneys for Appellants and
Defendants.

PILLSBURY, MADISON &
SUTRO

Attorneys for Appellee and
Plaintiff.

ORDER APPROVING STATEMENT OF
EVIDENCE.

The foregoing Narrative Statement of Evidence is herewith allowed, settled and approved as a full, true and correct statement in narrative and verbatim form of all the testimony produced upon the trial of the above entitled cause.

A. F. ST. SURE

United States District Judge.

San Francisco, California,

Dated: Nov. 27th, 1936. [94]

[Endorsed]: Filed Aug 3 1936.

[Title of Court and Cause.]

DEFENDANTS' PETITION FOR APPEAL
FROM DECREE GRANTING PERMA-
NENT INJUNCTION.

To the Hon. A. F. St. Sure, Judge of the United States District Court for the Northern District of California:

FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Co., defendants above-named, and each of [95] them, feeling themselves aggrieved by the final order, judgment and decree of the above-entitled Court granting to the above-named plaintiff a permanent injunction as prayed for in the Bill of Complaint on file herein, which said final order, judgment and decree was made and entered herein on the 22nd day of May,

1936, do hereby petition for an appeal from the said order, judgment and Decree Granting Permanent Injunction to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon each and all of the grounds set forth in the Assignments of Error filed herewith, and pray that their appeal may be allowed, and a citation issued, directed to said appellee, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, commanding it to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice in the premises, and that a transcript of the record, proceedings, and evidence in the above-entitled action, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit; or for such other, further and different order or relief, as to this Honorable Court may seem just in the premises.

FRED S. LEON and DAGMAR
LEON, doing business as Nu-
merical Directory Co.,
Petitioners,

By ARTHUR P. SHAPRO

Their Attorney

JAMES M. NAYLOR and

ARTHUR P. SHAPRO

Attorneys for Petitioners,

Defendants and Appellants.

The foregoing appeal is hereby allowed upon the filing herein by said petitioners of a cost bond, conditioned as required by Section 1000 of the Revised Statutes of the United States, with sufficient sureties to be approved by this Court, in the sum of \$250.00.

Dated at San Francisco, in said District, this 3rd day of August, 1936.

A. F. ST. SURE

U. S. District Judge. [97]

[Endorsed]: Filed Aug 3 1936.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Now come FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Company, defendants above named, and assign the following and each of them as errors on which they will rely upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain final Order, Judgment and Decree of the above-entitled Court, granting permanent injunction, made and entered herein on May 22nd, 1936:

[98]

1. That the said Order, Judgment and Decree of said United States District Court for the Northern District of California, is not supported by the evidence adduced herein.

2. That the said Order, Judgment and Decree of said United States District Court for the North-

ern District of California is contrary to the evidence adduced herein.

3. That the Findings of Fact herein, upon which said Order, Judgment and Decree of said United States District Court for the Northern District of California is based, are contrary to the evidence adduced herein.

4. That the evidence adduced herein is insufficient to support any or all of the following findings which were adopted by said United States District Court for the Northern District of California in the making of its said Order, Judgment and Decree, namely:

(a) "The collection, editing, compilation, classification, arrangement, preparation of the material in said directories and the publication of said directories involved a large amount of detail and required great effort, discretion, judgment, painstaking care, skill, labor, accuracy, experience and authorship of high order. Said telephone directories were the sole and exclusive property of plaintiff, and plaintiff possessed the sole and exclusive literary and other rights therein, including the right to copy. Said directories constitute new and original literary works, and are the proper subject of copyright. Said copyrights are existing and plaintiff is the sole and exclusive owner, author and proprietor thereof.", as set forth in paragraph V of said Findings.

(b) "The copyright of plaintiff's said May, 1935, directories is valid.", as set forth in paragraph VI of said Findings.

(c) "Defendants copied and transferred into said [99] numerical directories, without the consent or license of plaintiff and in violation of plaintiff's rights under its copyrights, valuable and material portions of plaintiff's copyrighted May, 1935, directories, and thus saved themselves the expenditure of a large amount of time, labor and money. Defendants took and appropriated to their own use the entire portion of the alphabetical section of plaintiff's May, 1935, directories, and did not obtain any of the information contained in their numerical directories from original sources or from any source other than plaintiff's said directories. Defendants' said copying of plaintiff's said directories was deliberate and premeditated and constituted an infringement of plaintiff's said directories.", as set forth in Paragraph VII of said Findings.

(d) "Defendants have infringed plaintiff's copyrights of its May, 1935, directories", as set forth in paragraph VIII of said Findings.

5. That the said order of said United States District Court for the Northern District of California in adopting its findings of fact, upon which said Order, Judgment and Decree is based, failed to take into consideration the following proposed amendments and additions thereto regularly submitted to said Court on behalf of the Defendants herein, namely:

(a) An amendment to Paragraph V of the findings of fact consisting in the deletion therefrom of

the first two sentences, beginning "The collection, editing . . .", in line 1, and ending ". . . right to copy.", in line 9 thereof.

(b) An amendment to the findings of fact consisting of the deletion of the whole of Paragraph VIII and substitution of the following: "The use of the material within Plaintiff's copyrighted alphabetical telephone directories for 1935 by the Defendants in the compiling and publishing of their numerical [100] telephone directories was an unfair use, and therefore an infringement thereof."

6. That the conclusions of law herein upon which said Order, Judgment and Decree of said United States District Court for the Northern District of California is based, are not supported by and are contrary to the findings of fact entered herein and to the evidence upon which same were based.

7. That the said Order, Judgment and Decree of said United States District Court for the Northern District of California denied defendants the relief prayed for in their answers to the Bill of Complaint herein, namely, the dismissal of the Bill of Complaint with costs and attorneys' fees to said defendants.

8. The Orders of said Court in overruling each and every of defendants' objections and sustaining each and every of plaintiff's objections upon the trial of the cause herein.

9. That the Order of said Court denying the motion of the defendant, Dagmar Leon, to dismiss the Bill of Complaint as against her was not sup-

ported by and was contrary to the evidence adduced herein, to which said Order timely exception was noted by said defendant.

10. That the Order of said Court, entered November 25, 1935, adjudging and decreeing that a preliminary injunction issue against the defendants herein was contrary to law and not supported by the evidence upon which same was predicated.

NOW, THEREFORE, in order that the foregoing assignments may be and appear on record, defendants present the same and pray that said assignments may be filed and that such disposition may be made thereof as is in accordance with the laws of the United States in that behalf made and provided; and pray that the said Final Order, Judgment and Decree, granting permanent injunction, herein be reversed and that the District Court of [101] the United States for the Northern District of California be directed to enter a decree in favor of defendants in accordance with the prayer of their answers to the Bill of Complaint on file herein.

Respectfully submitted,

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Solicitors & Attorneys for

Defendants. [102]

Know All Men by these Presents,

That we, FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Co., as principals and AMERICAN EMPLOYERS' INSURANCE COMPANY, a corporation, of 110 Milk Street, Boston, Massachusetts, as Surety, are held and firmly bound unto THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, in the full and just sum of TWO HUNDRED FIFTY AND NO/100 (\$250.00) dollars, to be paid to the said THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of August in the year of our Lord One Thousand Nine Hundred and Thirty-six.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit depending in said Court, between THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Plaintiff and FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Co., Defendants, a Decree was rendered against the said Defendants and the said Defendants having obtained from said Court an Order Allowing Appeal to reverse the Decree in the aforesaid suit, and a citation directed to the said THE PACIFIC TELEPHONE AND

TELEGRAPH COMPANY, a corporation, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now, the condition of the above obligation is such, That if the said FRED S. LEON and DAGMAR LEON, doing business as Numerical Directory Co., shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

(Signature of Perry acknowledged before Notary Public Aug. 4, 1936)

[Endorsed]: Form of bond and sufficiency of sureties approved.

A. F. ST. SURE,
Judge.

This recognizance shall be deemed and construed to contain the "Express Agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

[Seal] DAGMAR LEON

[Seal] FRED S. LEON

[Seal] AMERICAN EMPLOYERS'
INSURANCE COMPANY

By JOHN STONE PERRY

Attorney-in-fact.

[Endorsed]: Filed Aug. 7, 1936. [103]

[Endorsed]: Filed Aug 20 1936.

[Title of Court and Cause.]

STIPULATION ENLARGING PLAINTIFF
AND APPELLEE'S TIME TO FILE
A COUNTER-PRAECIPE FOR TRAN-
SCRIPT OF RECORD ON APPEAL FROM
DECREE GRANTING PERMANENT IN-
JUNCTION.

It is hereby stipulated and agreed by and be-
tween the above noted parties that plaintiff and
appellee may have to and including September 1,
1936, within which to file herein its counter-prae-
cipe for transcript of record on appeal from decree
granting permanent injunction under equity
rule 75, and its time to do so may be so enlarged
by order of the above entitled court.

Dated: August 19, 1936.

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Attorneys for Defendants
and Appellants.

PILLSBURY, MADISON &
SUTRO

Attorneys for Plaintiff and
Appellee.

It is so ordered.

Dated: August 20, 1936.

A. F. ST. SURE

Judge of said Court. [104]

[Endorsed]: Filed Aug 31 1936.

[Title of Court and Cause.]

STIPULATION ENLARGING PLAINTIFF
AND APPELLEE'S TIME TO FILE
A COUNTER-PRAECIPE FOR TRAN-
SCRIPT OF RECORD ON APPEAL FROM
DECREE GRANTING PERMANENT IN-
JUNCTION.

It is hereby stipulated and agreed by and be-
tween the above noted parties that plaintiff and ap-
pellee may have to and including September 11,
1936, within which to file herein its counter-prae-
cipe for transcript of record on appeal from de-
cree granting permanent injunction under equity
rule 75, and its time to do so may be so enlarged
by order of the above entitled court.

Dated: August 29, 1936.

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Attorneys for Defendants
and Appellants.

PILLSBURY, MADISON &
SUTRO

Attorneys for Plaintiff and
Appellee.

It is so ordered.

Dated: August 29, 1936.

A. F. ST. SURE

Judge of said Court. [105]

[Endorsed]: Filed Aug 13 1936.

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL FROM DECREE GRANTING
PERMANENT INJUNCTION.

To WALTER B. MALING, Esq., Clerk of the
above-entitled Court:

YOU ARE HEREBY REQUESTED to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal from a decree granting permanent injunction heretofore allowed in the above entitled proceeding, and to include in said transcript the following: [106]

- (1) Bill of Complaint.
- (2) Order to Show Cause.
- (3) Affidavits on Order to Show Cause.
- (4) Defendants' Affidavit in reply to Order to Show Cause.
- (5) Order Granting Preliminary Injunction.
- (6) Answers of Defendants.
- (7) Minute Order Denying Motion to Dismiss.
- (8) Memorandum of Decision.
- (9) Findings of Fact and Conclusions of Law.
- (10) Decree Granting Permanent Injunction.
- (11) Statement of Evidence as required by Equity Rule 75 as hereafter approved by the above-entitled Court.
- (12) Petition for Appeal from Decree Granting Permanent Injunction.

- (13) Order Allowing Appeal.
- (14) Assignment of Errors thereon.
- (15) Bond on Appeal.
- (16) Citation thereon.
- (17) This Praecipe.
- (18) Clerk's Certificate.

Dated this 11th day of August, 1936.

ARTHUR P. SHAPRO

JAS. M. NAYLOR

Attorneys for Defendants
and Appellants.

Receipt of a copy of the within praecipe is hereby
acknowledged this 12 day of August, 1936.

PILLSBURY, MADISON &
SUTRO

Attorneys for Plaintiff and
Appellee. [107]

[Endorsed]: Filed Sep 10 1936.

[Title of Court and Cause.]

COUNTER-PRAECIPE FOR TRANSCRIPT
OF RECORD ON APPEAL FROM DE-
CREE GRANTING PERMANENT IN-
JUNCTION.

To Walter B. Maling, Esq., Clerk of the above en-
titled court:

You are hereby requested, pursuant to the pro-
visions of Equity Rule 75, to incorporate into the
transcript of record on the appeal herein, in addi-

tion to the portions of the record indicated by appellants herein by *their* praecipe to be included in the transcript of record herein, the following:

1. Stipulation and order for transmitting original exhibits to appellate court;
2. The following original exhibits, none of which is to be reproduced or printed in said record:
 - (a) Plaintiff's Exhibit No. 1, consisting of telephone directory, San Francisco and Bay Counties, May, 1935;
 - (b) Plaintiff's Exhibit No. 2, consisting of telephone directory, Oakland, Alameda, Berkeley, San Leandro and Bay Counties, May, 1935;
 - (c) Plaintiff's Exhibit No. 3, consisting of manuscript used in compiling directories;
 - (d) Plaintiff's Exhibit No. 4, consisting of February 1, 1909, telephone directory;
 - (e) Plaintiff's Exhibit No. 5, consisting of numerical telephone directory, 1935-36, for San Francisco and other cities and towns;
 - (f) Plaintiff's Exhibit No. 6, consisting of numerical telephone directory, 1935, Oakland, Berkeley, Alameda and San Leandro;
 - (g) Plaintiff's Exhibit No. 7, consisting of copyright certificates for issues of plaintiff's San Francisco telephone directory published beginning with Oc-

tober, 1908, and ending with May, 1935, issues;

- (h) Plaintiff's Exhibit No. 8, consisting of copyright certificates for issues of plaintiff's Oakland telephone directory published beginning with October, 1908, and ending with May, 1935, issues; [108]
- (i) Plaintiff's Exhibit No. 9, consisting of photostatic copy of application for telephone service;
- (j) Plaintiff's Exhibit No. 10, consisting of a list of errors appearing in the East Bay telephone directory, marked Exhibit "A";
- (k) Plaintiff's Exhibit No. 11, consisting of a list of errors appearing in the San Francisco telephone directory, marked Exhibit "B";
- (l) Plaintiff's Exhibit No. 12, consisting of alphabetical list of errors and omissions in the May, 1935, directory;
- (m) Plaintiff's Exhibit No. 13, consisting of rules and regulations of the Railroad Commission;
- (o) Plaintiff's Exhibit No. 14 for identification, consisting of receipt for purchase of numerical telephone directory;
- (p) Plaintiff's Exhibit No. 15, consisting of defendant's work chart in compiling their numerical telephone directory;

- (g) Plaintiff's Exhibit No. 16, consisting of a letter from Dagmar Leon to A. C. Calendar, dated 9/27/35;
 - (r) Plaintiff's Exhibit No. 17, consisting of a comparison of 1,000 listings in plaintiff's San Francisco telephone directory with the same listings in defendants' numerical telephone directory for 1935-36 for San Francisco;
3. Stipulation and order enlarging plaintiff and appellee's time to file a counter-praeceipe for transcript of record on appeal from decree granting permanent injunction, dated August 19, 1936, and filed herein August 20, 1936;
 4. Stipulation and order enlarging plaintiff and appellee's time to file a counter-praeceipe for transcript of record on appeal from decree granting permanent injunction, dated August 29, 1936, and filed herein August 31, 1936;
 5. This counter-praeceipe.
 6. Clerk's certificate.

Dated this 10th day of September, 1936.

PILLSBURY, MADISON & SUTRO

Attorneys for Plaintiff
and Appellee

Receipt of a copy of the within Counter-Praecept, etc., is hereby admitted this 10th day of Sept. 1936.

JAS. M. NAYLOR

Attorney for Defts. [109]

[Endorsed]: Filed Sep. 10, 1936.

[Title of Court and Cause.]

STIPULATION AND ORDER FOR TRANSMITTING ORIGINAL EXHIBITS TO APPELLATE COURT

It is hereby stipulated and agreed by and between the above named parties and their respective counsel that the original exhibits listed herein shall be withdrawn from the files of the above entitled court, and of the clerk thereof, and by said clerk be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein, but none of said exhibits shall be reproduced or printed in said record.

Said original exhibits are to be returned to the files of the above entitled court upon the determination of said appeal by said Circuit Court of Appeals.

The list of said original exhibits is as follows:

1. Plaintiff's Exhibit No. 1, consisting of telephone directory, San Francisco and Bay Counties, May, 1935;

2. Plaintiff's Exhibit No. 2, consisting of telephone directory, Oakland, Alameda, Berkeley, San Leandro and Bay Counties, May, 1935;

3. Plaintiff's Exhibit No. 3, consisting of manuscript used in compiling directories;

4. Plaintiff's Exhibit No. 4, consisting of February 1, 1909, telephone directory;

5. Plaintiff's Exhibit No. 5, consisting of numerical telephone directory, 1935-36, for San Francisco and other cities and towns;

6. Plaintiff's Exhibit No. 6, consisting of numerical telephone directory, 1935, Oakland, Berkeley, Alameda and San Leandro;

7. Plaintiff's Exhibit No. 7, consisting of copyright certificates for issues of plaintiff's San Francisco telephone directory published beginning with October, 1908, and ending with May, 1935, issues;

8. Plaintiff's Exhibit No. 8, consisting of copyright certificates for issues of plaintiff's Oakland telephone directory published beginning with October, 1908, and ending with May, 1935, issues;

9. Plaintiff's Exhibit No. 9, consisting of photostatic copy of application for telephone service;

10. Plaintiff's Exhibit No. 10, consisting of a list of errors appearing in the East Bay telephone directory, marked Exhibit "A";

11. Plaintiff's Exhibit No. 11, consisting of a list of errors appearing in the San Francisco telephone directory, marked Exhibit "B";

[110]

12. Plaintiff's Exhibit No. 12, consisting of alphabetical list of errors and omissions in the May, 1935, directory;

13. Plaintiff's Exhibit No. 13, consisting of rules and regulations of the Railroad Commission;

14. Plaintiff's Exhibit No. 14 for identification, consisting of receipt for purchase of numerical telephone directory;

15. Plaintiff's Exhibit No. 15, consisting of defendants' work chart in compiling their numerical telephone directory;

16. Plaintiff's Exhibit No. 16, consisting of a letter from Dagmar Leon to A. C. Calender, dated 9/27/35;

17. Plaintiff's Exhibit No. 17, consisting of a comparison of 1,000 listings in plaintiff's San Francisco telephone directory with the same listings in defendants' numerical telephone directory for 1935-36 for San Francisco.

Dated: September 5th, 1936.

PILLSBURY, MADISON & SUTRO

Attorneys for Plaintiff and Appellee

JAS. M. NAYLOR

ARTHUR P. SHAPRO

Attorneys for Defendants and Appellants

It appearing to the court to be necessary and proper to transmit the above mentioned original exhibits to the United States Circuit Court of Appeals for the Ninth Circuit for its examination and inspection as part of the record on appeal herein, it is hereby ORDERED that the original exhibits listed above shall be withdrawn from the files of the above entitled court, and of the clerk thereof, and by said clerk be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein, but none of said exhibits shall be reproduced or printed in said record.

And it is hereby further ORDERED that the original documents so transmitted to said United States Circuit Court of Appeals for the Ninth Circuit are hereby made part of the record on appeal herein, but none of said exhibits shall [111] be reproduced or printed in said record.

Dated: September 10, 1936.

A. F. ST. SURE

Judge of the United States District Court
[112]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, WALTER B. MALING, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 112 pages, numbered from 1 to 112, inclusive, contain a full, true, and correct transcript of the records and proceedings in the cause entitled *The Pacific Telephone and Telegraph Company, a corp., Plaintiff, vs. Fred S. Leon, et al., Defendants, No. 3943-S*, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$16.40 and that the said amount has been paid to me by the Attorneys for the appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of November, A. D. 1936.

[Seal]

WALTER B. MALING,

Clerk

J. P. WELSH,

Deputy Clerk [113]

United States of America.—ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To THE PACIFIC TELEPHONE AND TELE-
GRAPH COMPANY, a corporation, GREET-
ING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear at a United States Cir-
cuit Court of Appeals for the Ninth Circuit, to be
holden at the City of San Francisco, in the State
of California, within thirty days from the date
hereof, pursuant to an order allowing an appeal, of
record in the Clerk's Office of the United States
District Court for the Northern District of Cali-
fornia, Southern Division wherein FRED S. LEON
and DAGMAR LEON, doing business as Numeri-
cal Directory Co., are appellants, and you are ap-
pellee, to show cause, if any there be, why the
decree or judgment rendered against the said ap-
pellants, as in the said order allowing appeal men-
tioned, should not be corrected, and why speedy
justice should not be done to the parties in that
behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge, for the Northern District of California, this 11th day of August, A. D. 1936.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Aug. 12, 1936. [114]

[Endorsed]: No. 8397. United States Circuit Court of Appeals for the Ninth Circuit. Fred S. Leon and Dagmar Leon, doing business as Numerical Directory Company, Appellants, vs. The Pacific Telephone and Telegraph Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed, November 30, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.